

**MISSISSIPPI SUPREME COURT DECISIONS – APRIL 9, 2020****SUPREME COURT - CIVIL CASES****CITY OF VICKSBURG V. WILLIAMS****CIVIL - PERSONAL INJURY**

**APPELLATE REVIEW - FACTUAL FINDINGS - RECKLESS DISREGARD** - A circuit court judge sitting as the trier of fact is given the same deference with regard to fact finding as a chancellor, and his or her findings are safe on appeal when they are supported by substantial, credible, or reliable evidence; although reasonable minds might differ on the conclusion of whether or not the officer in question acted in reckless disregard, it is beyond the appellate court's power to disturb the circuit judge's findings if supported by substantial evidence

**MISS. TORT CLAIMS ACT - SOVEREIGN IMMUNITY - RECKLESS DISREGARD** - Miss. Code Ann. § 11-46-9(1)(c) states that a governmental entity and its employees acting within the course and scope of their employment or duties shall not be liable for any claim arising out of any act or omission of an employee of a governmental entity engaged in the performance or execution of duties or activities relating to police or fire protection unless the employee acted in reckless disregard of the safety and well-being of any person not engaged in criminal activity at the time of the injury

**FACTS**

In February 2013, Vicksburg police officers Russell Dorsey and Diawardrick Grover were dispatched to Herbert Williams's residence. Williams had called 911 because he discharged his firearm at the neighbor's dog. Officer Dorsey arrested Williams for unnecessarily discharging a firearm in violation of Vicksburg's city ordinance, and he was subsequently transported to the police station. Williams made bail two hours after his arrest. In July 2014, Williams filed a complaint against the City of Vicksburg ("City"), alleging the police officers negligently and grossly arrested him without good cause, which caused him physical and psychological damages. In response, the City raised sovereign immunity under the Mississippi Tort Claims Act ("MTCA") as a defense. Further, the City filed a motion to dismiss under Miss. R. Civ. P. 12(b)(6), which the circuit court denied. After the denial of the motion to dismiss, the City petitioned for an interlocutory appeal, which was later granted. After the bench trial, the circuit judge issued a judgment in favor of Williams and awarded him \$150,000 in damages. The City appealed.

**ISSUE**

Whether the circuit court erred by failing to find that the City was immune under the MTCA.

**HOLDING**

(1) Because the officer did not curse, shove, or strike Williams and showed no animosity or dislike towards him, because the officers followed proper police procedure during the arrest, and because Williams received neither different nor special treatment, no substantial and credible evidence supported a finding of reckless disregard and the City was not liable for Williams's claim under the MTCA. Therefore, the Supreme Court reversed and rendered the judgment of the Warren County Circuit Court.

**CONCURRENCE IN PART/IN RESULT**

Presiding Justice Kitchens argued that while the officers mistakenly arrested Williams in violation of Miss. Code Ann § 99-3-7, the trial court erred by finding that the officers acted in reckless disregard of the safety and well-being of any person not engaged in criminal activity. However, under the totality of the circumstances, while the arrest was illegal, it was nonetheless a peaceful arrest. Therefore, because the majority made no mention of the illegality of Williams's arrest, but reached the correct result, he concurred in part and in result.

**Reversed & Rendered - 2019-CA-00209-SCT (Apr. 9, 2020)**

En Banc Opinion by Justice Griffis - Concurrence in Part/in Result by Presiding Justice Kitchens  
Hon. Isadore W. Patrick Jr. (Warren County Circuit Court)  
John Michael Coleman & Claire K. Robinett for Appellant - Marshall E. Sanders for Appellee  
Briefed by [Brittany Brewer](#)

[Click here to view the full opinion](#)

## **VIRGIL V. SW. MISS. ELEC. POWER ASS'N.**

### **CIVIL - OTHER**

**CONTRACTS - BYLAWS - AMENDMENT** - Execution of a contract purporting to bind a party to a set of bylaws, which gives notice of the board of directors' power to amend such bylaws, binds that party to any further amendments made pursuant to the board's lawful authority; including the addition of an arbitration agreement

**ALTERNATIVE DISPUTE RESOLUTION - ARBITRATION - STANDARDS** - In order to determine whether a dispute is subject to arbitration, the court must determine (1) whether the parties had a valid agreement in arbitration and (2) whether the specific dispute falls within the substantive scope of the arbitration agreement

**CONTRACTS - UNCONSCIONABILITY - VOLUNTARINESS** - The members' ability to alter their terms of membership by electing who among them will serve on a board of directors, and the ability to bring grievances at regular board meetings, defeats a member's lack-of-voluntariness argument by making the terms of membership negotiable

**CONTRACTS - DEFENSE - APPLICATION** - Any general state-law contract defense must apply generally, rather than single out or disproportionately impact arbitration

### **FACTS**

In order to purchase energy from Southwest Mississippi Electric Power Association ("Southwest"), each member was required to sign a membership application. This membership application required applicants to comply with and be bound by Southwest's charter, bylaws, and rules and regulations that Southwest or its Board of Directors adopted or may adopt. In February 2017, the Board of Directors amended the bylaws to include an arbitration agreement. This provision stated, that any controversy or claim arising out of or relating to, the bylaws or a breach of these rules would be resolved by binding arbitration. In December 2017, Ray Virgil, Barbara Lloyd, and Cassandra Johnson ("Plaintiffs"), members of Southwest, filed a complaint, alleging Southwest unlawfully failed to return to its members more than \$13 million in excess member equity as required by Miss. Code Ann. § 77-5-235(5). Southwest argued that arbitration was the appropriate avenue for resolving the dispute because its members agreed to be bound by the bylaws, including the arbitration agreement. Plaintiffs argued they did not agree to arbitrate, as they signed a one-page membership application that did not mention of an arbitration provision before the February 2017 amendment. Plaintiffs also argued the membership application was unconscionable. The trial court granted Southwest's motion to compel arbitration, finding that the parties had entered into a valid arbitration agreement and Plaintiffs had failed to prove unconscionability. The trial court also found that the dispute fell within the scope of the arbitration provision included in the 2017 amendment. Plaintiffs appealed.

### **ISSUES**

Whether the trial court erred by finding (1) the parties entered into a valid arbitration agreement; (2) the dispute fell within the scope of the arbitration provision; and (3) no external factors precluded arbitration in this matter.

### **HOLDING**

(1) Because Plaintiffs executed a membership application that gave them notice of the Board of Directors' power to amend the bylaws, and because this notice defeated their lack of notice unconscionability arguments, the 2017 arbitration agreement was valid and the trial court did not err by finding that the parties entered into a valid arbitration agreement.

(2) Because the arbitration provision used broad language, and because the matter of patronage capital touched matters covered by the agreement, the trial court did not err by finding that the dispute fell within the scope of the arbitration provision.

(3) Because Plaintiffs were aware that the Board of Directors could adopt and amend the bylaws, because

Plaintiffs could alter their membership terms by electing who served on the Board of Directors, and because the terms of the arbitration agreement did not conflict and were not ambiguous when read together as a whole, the arbitration provision was not unconscionable or ambiguous and the trial court did not err in finding that no external factors precluded arbitration in this matter. Therefore, the Supreme Court affirmed the judgment of the Adams County Chancery Court.

### **DISSENT**

Presiding Justice King argued Plaintiffs demonstrated both a lack of knowledge and voluntariness in the arbitration agreement because the membership application did not mention an arbitration provision, they did not receive prior notice that the bylaws were amended to include an arbitration agreement, and Southwest did not offer members the option to opt out of the arbitration provision. Also, he argued Plaintiffs had no alternative means of receiving electricity, and rejected Southwest's argument that solar panels or generators were reasonable alternatives for the average Mississippian. As a result, he would find the arbitration agreement was a contract of adhesion and was procedurally unconscionable.

#### **Affirmed - 2018-CA-01133-SCT (Apr. 9, 2020)**

En Banc Opinion by Justice Griffis - Dissent by Presiding Justice King  
Hon. George Ward (Adams County Chancery Court)

Walker (Bill) Jones III, Michael D. Simmons, Brannon Lee Berry, Robert L. Johnson III, David Wayne Baria, & Justin Ronald Glenn for Appellants - Christine M. Schwing, W. Bruce Lewis, Luther T. Munford, & Robert M. Gore for Appellee  
Briefed by [Charles Ellzey](#)

[Click here to view the full opinion](#)

---

## ***SUPREME COURT - CRIMINAL CASES***

### **WILLIS V. STATE**

#### **CRIMINAL - FELONY**

**CRIMINAL PROCEDURE - EVIDENCE - CHARACTER EVIDENCE** - Under Miss. R. Evid. 404(b)(1), evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion, the person acted in accordance with the character

**CRIMINAL PROCEDURE - NEW ISSUES - APPEAL** - Under *Tate v. State*, issues not brought before the trial court are deemed waived and may not be raised for the first time on appeal

**CRIMINAL PROCEDURE - EVIDENCE - REBUTTAL TESTIMONY** - The State is permitted to present rebuttal testimony in order to explain, repel, counteract, or disprove evidence offered by the defense

**CRIMINAL PROCEDURE - ABUSE OF DISCRETION - HARMLESS ERROR** - Harmless errors are errors that are not important or not significant when considering the context of the case and its result

**CRIMINAL PROCEDURE - AIDING AND ABETTING - ELEMENTS** - To be convicted as an aider or abettor, in addition to being present, a defendant must aid, counsel, or encourage the person committing the crime

**CRIMINAL PROCEDURE - SENTENCING - STATUTORY LIMITS** - A sentence will not be disturbed when it is within the statutorily prescribed limits unless the sentence is disproportionate to the crime charged

#### **FACTS**

Michael Willis ("Willis") and his nephew, Kedarious Willis ("Kedarious"), got into a fight with Travell Moore in Crystal Springs over a claim that Moore had stolen a radio from Willis's car. After the fight, Willis and Kedarious drove to Kedarious's grandmother's house, where the confrontation between Willis, Kedarious, and Moore renewed. Moore claimed that he turned his back to Willis and heard Willis say, "shoot, shoot." Kedarious claimed that he saw Moore grab a gun from his pocket, so Kedarious began to shoot in fear for his life. Moore was shot and was hospitalized due to a collapsed lung, lacerated liver, and paralysis. Willis and Kedarious were indicted with aggravated assault and conspiracy. Evidence of Moore's prior conviction was ruled inadmissible at trial, and questions regarding the frequency

of Moore's drug use were not allowed. Moore's medical records were not admitted because they were not certified and were not shown to qualify under the medical records exception to the hearsay rule. Jenica Powell, a witness, testified that Willis told Kedarious to shoot Moore. Powell was presented as a rebuttal witness rather than a witness in the State's case-in-chief. The trial court did not allow Willis to reference the dismissal of the conspiracy count in his closing argument. Although Moore and Powell testified that Willis told Kedarious to shoot Moore, other witnesses testified that they could not hear Willis or that Willis was silent at the time of the shooting. During the trial, a juror discussed the trial with Moore's twin brother. Upon this discovery, the juror was removed and was replaced by an alternate juror. Willis did not make a motion for a mistrial until after his conviction and sentencing. Willis and Kedarious were found guilty of aggravated assault, and Willis was sentenced to twenty years in prison as a habitual offender. Willis appealed.

### **ISSUES**

Whether (1) the trial court abused its discretion by barring reference to Moore's earlier conviction and the frequency of his drug use; (2) the trial court improperly ruled Moore's medical records inadmissible; (3) the trial court abused its discretion by allowing the State to present Powell as a rebuttal witness; (4) the trial court improperly prevented Willis from referencing the trial court's ruling dismissing the conspiracy count in Willis's closing argument; (5) the evidence was legally sufficient to support Willis's conviction for aggravated assault; (6) the trial court erred by not granting Willis's motion for a new trial in light of the alleged contact between a juror and the victim's twin brother; (7) Willis's twenty-year sentence as a habitual offender for aiding or abetting commission of aggravated assault excessive, unreasonable, cruel and unusual, or grossly disproportionate; and (8) Willis's miscellaneous arguments were unavailing.

### **HOLDING**

(1) Because the facts regarding a prior conviction were inadmissible for showing that Moore acted in accordance with that character on this occasion, and because any error regarding Moore's drug use was harmless error, the trial judge did not abuse his discretion. (2) Because Willis did not raise any issues regarding the admission of medical records at the trial court, the issues could not be challenged on appeal. (3) Because Powell's testimony was offered in order to rebut conflicting testimony offered by the defense, Powell's testimony was correctly allowed on rebuttal. (4) Because any error that the trial court may have committed regarding the dismissal of Willis's conspiracy count was harmless, the trial court did not abuse its discretion. (5) Because evidence showed that Willis aided, counseled, or encouraged Kedarious to shoot Moore, the evidence was legally sufficient to support Willis's conviction of aggravated assault. (6) Because Willis did not move for a mistrial due to a juror's actions when the actions were discovered, his objection was procedurally barred on appeal. (7) Because Willis's sentence was within the statutory guidelines, and because the gravity of the offense was proportionate to the severity of the sentence, Willis's twenty-year sentence was not excessive, unreasonable, cruel and unusual, or grossly disproportionate. (8) Because direct evidence was presented at trial, and because the trial court never ruled on Willis's motion for an appeal bond, Willis was not entitled to a circumstantial-evidence instruction and the issue was not preserved for review. Therefore, the Supreme Court affirmed the judgment of the Copleah County Circuit Court.

### **CONCURRENCE IN PART/IN RESULT**

Presiding Justice King argued Moore provided inaccurate testimony regarding his prior conviction. He further argued that since the State "opened the door," the jury had a right to know that he provided inaccurate testimony and Willis should have been able to cross-examine Moore about the remainder of his criminal record. Despite this, he concluded that the error did not warrant a reversal.

#### **Affirmed - 2018-KA-01509-SCT (Apr. 9, 2020)**

Opinion by Chief Justice Randolph - Concurrence in Part/in Result by Presiding Justice King

Hon. Lamar Pickard (Copleah County Circuit Court)

Matt W. Kitchens for Appellant - John R. Henry Jr. (Att'y Gen. Office) for Appellee

Briefed by [Luke Seymour](#)

[Click here to view the full opinion](#)

**MISSISSIPPI COURT OF APPEALS DECISIONS – APRIL 7, 2020**  
**COURT OF APPEALS - CIVIL CASES**

**BAKER V. RAYMOND JAMES & ASSOCS. INC.**

**CIVIL - CONTRACT**

**STATUTE OF LIMITATIONS - TOLLING - DISCOVERY RULE** - In actions for which no other period of limitation is prescribed and which involve latent injury or disease, the cause of action does not accrue until the plaintiff has discovered, or by reasonable diligence should have discovered, the injury

**STATUTE OF LIMITATIONS - DISCOVERY RULE - INHERENTLY UNDISCOVERABLE** - The discovery rule may be applied where the plaintiff will be precluded from discovering harm or injury because of the secretive or inherently undiscoverable nature of the wrongdoing in question, or when it is unrealistic to expect a layman to perceive the injury at the time of the wrongful act

**STATUTE OF LIMITATIONS - DISCOVERY RULE - INHERENTLY UNDISCOVERABLE** - Because there is no bright-line rule in defining a latent injury, the specific facts of the case will determine whether the plaintiff knew or reasonably should have known that an injury existed

**FACTS**

Six Bell South employees, who did not have any prior investment experience, placed a significant portion of their retirement savings with Stephen Kane Savell, an advisor at Raymond James & Associates (“Raymond James”). Savell assured them that he would invest their money to provide them with income for the rest of their lives. According to the Bell South employees, Savell instead purchased various variable annuities, but liquidated them early, which incurred a variety of fees in the employees’ accounts. In addition, Savell purchased several penny stocks, in violation of his employer’s own policy, and lost a significant amount of money as a result. The Bell South employees also accused Savell of engaging in “reverse churning,” which entailed charging an account a fixed fee even while there was little to no trading in that account. During this time, the employees continued to receive their “retirement checks,” but also received account statements evidencing the losses and charges. When they asked Savell about these losses, he always assured them that everything was fine. After learning about an arbitration proceeding involving Raymond James and Savell, the Bell South employees brought their own claim against them. Raymond James and Logan B. Phillips, a branch manager of Raymond James, moved for summary judgment. Savell later joined their summary judgment motion. The trial court granted their motion for summary judgment because the Bell South employees brought their claims after the three-year statute of limitations. The Bell South employees appealed.

**ISSUES**

Whether the circuit court erred in (1) finding the Bell South employees failed to meet their burden of proving a genuine issue of material fact regarding any basis for tolling the statute of limitations on their common law claims and (2) holding the Bell South employees’ blue sky law claims were time barred.

**HOLDING**

(1) Because the Bell South employees were lay investors who were financially inexperienced, they continued receiving retirement checks, and they received assurances from Savell that they would fully recover their losses, Savell’s wrongdoing was inherently undiscoverable before the Bell South employees learned of the arbitration proceeding, there was a genuine issue of material fact regarding whether the Bell South employees knew or should have known they had an actionable injury, and the circuit court erred in awarding summary judgment based on the statute of limitations with regard to the Bell South employees’ common law claims. (2) Because the Bell South employees did not challenge the blue sky law statute-of-limitations ruling on appeal, their claims under the Mississippi Securities Act of 2010 were time-barred. Therefore, the Court of Appeals affirmed in part and reversed and remanded in part the judgment of the Hinds County Circuit Court.

**CONCURRENCE IN PART/DISSENT IN PART**



Judge McCarty argued there was not any way the harm to the Bell South employees was not reasonably discoverable by the time the statute of limitations period had expired because it does not require advanced degrees or financial backgrounds to see that they were consistently losing money in their accounts. He also stated that, although the majority and circuit court referenced a negligent supervision claim against Raymond James, he did not see such a claim in the complaint under the standards of Miss. R. Civ. Pro. 8. As a result, he agreed with the majority that the blue sky claims were waived, but would have affirmed the circuit court's grand of summary judgment as to the common law claims.

**Affirmed in Part; Reversed & Remanded in Part - 2019-CA-00073-COA (Apr. 7, 2020)**

En Banc Opinion by Presiding Judge Carlton - Concurrence in Part/Dissent in Part by Judge McCarty

Hon. Jeff Weill Sr. (Hinds County Circuit Court, First Judicial Dist.)

Frank Chandler Breese III for Appellants - Jeffery R. Blackwood, Alan W. Perry, Stevie Farrar Rushing, Stefanie M. Wayco, Terry R. Weiss, James Wilbourn Vise, & Robert T. Higginbotham Jr. for Appellees

Briefed by [Reid Hudson](#)

[Click here to view the full opinion](#)

## EWING V. EWING

### CIVIL - DOMESTIC RELATIONS

**FAMILY LAW - PERMANENT PERIODIC ALIMONY - CONSIDERATIONS** - A chancellor's decision to award permanent alimony must consider both need and ability to pay after the marital property has been equitably divided and the chancellor determines one spouse has suffered a deficit

**FAMILY LAW - PERMANENT PERIODIC ALIMONY - EVIDENTIARY HEARING** - If a chancery court ruling has been remanded back from a superior court, the chancery court must conduct an evidentiary hearing on the new findings consistent with the superior court's ruling

**FAMILY LAW - DIVORCE - ATTORNEY FEES** - Attorney's fees may only be awarded to a party who has shown an inability to pay his or her own fees and chancellors are instructed to make specific findings regarding the recipient's ability to pay

### FACTS

In 2015, the DeSoto County Chancery Court granted Morgan and Melanie Ewing a divorce based on irreconcilable differences. Morgan appealed the decision and the Court of Appeals remanded for further findings on the issues of distribution of assets, alimony, and attorney's fees. On remand, the chancery court ordered Morgan to pay Melanie \$500 per month in alimony and \$11,807.57 in attorney's fees. The chancery court denied Morgan's motion for reconsideration. Morgan appealed.

### ISSUES

Whether the chancery court abused its discretion (1) in the amount of permanent periodic alimony awarded and (2) in ordering Morgan to pay Melanie's attorney fees.

### HOLDING

(1) Because the evidentiary hearing on remand showed Melanie was still left with a significant deficit, earning less than Morgan despite her wage increase, and because Morgan was able to pay the amount specified, the chancery court did not abuse its discretion in the amount of permanent periodic alimony awarded. (2) Because the evidentiary hearing showed the chancery court properly considered Morgan's ability to pay Melanie's attorney's fees, the chancery court did not abuse its discretion in ordering Morgan to pay Melanie's attorney fees. Therefore, the Court of Appeals affirmed the judgment of the DeSoto County Chancery Court.

**Affirmed - 2019-CA-00753-COA (Apr. 7, 2020)**

Opinion by Chief Judge Barnes

Hon. Mitchell M. Lundy Jr. (DeSoto County Chancery Court)

Jerry Wesley Hisaw for Appellant - Justin Keith Thomas & David Mark Slocum Jr. for Appellee

Briefed by [Daniel Bond](#)

[Click here to view the full opinion](#)

## FOSTER V. SANDERS CONSTR. AND BUILDERS

### CIVIL - WORKERS' COMPENSATION

**ADMINISTRATIVE LAW - MISSISSIPPI WORKERS' COMPENSATION COMMISSION - STANDARD OF REVIEW** - Review of a decision of the Mississippi Workers' Compensation Commission is limited to determining whether the decision was supported by substantial evidence, arbitrary and capricious, beyond the scope or power of the agency to make, or violated constitutional or statutory rights

**ADMINISTRATIVE LAW - MISSISSIPPI WORKERS' COMPENSATION COMMISSION - ATTORNEY'S FEES** - Pursuant to Miss. Code Ann. § 71-3-59(2), if the Commission determines that a party has instituted, continued or delayed proceedings without reasonable grounds, then the Commission may require the guilty party to reimburse the opposing party for its reasonable expenses, including attorney's fees, caused by such institution, continuance or delay

#### **FACTS**

Richard Corsby pursued a workers' compensation claim against his employer, Sanders Construction ("Sanders"). Corsby initially hired Jay Foster as his attorney, but Corsby fired Foster two months later and hired John T. Lamar III. Foster asserted an attorney's fee lien against Corsby's judgement for \$9,231, representing 30.77 hours of work at \$300 per hour. Corsby and Sanders eventually settled, and the Mississippi Workers' Compensation Commission ("Commission") ordered Sanders to retain the attorney's fee in trust, pending resolution of Foster's lien. Corsby filed a motion to cancel Foster's lien and Foster filed a motion for summary judgement. Additionally, Sanders filed a combined response, expressing a desire to close the claim and disburse the attorney's fees. Both Corsby and Sanders filed Rule 11 motions against Foster, requesting reimbursement of attorney's fees. The Commission held a hearing and found that Foster's contracted rate was \$280, rather than \$300. Also, Foster overbilled Corsby for hours attributable to paralegal work and for hours spent developing forms in previous years. The Commission ordered Foster to pay Lamar and Sanders's counsel \$4,000 each. Foster settled with Corsby prior to the Commission's order. Foster appealed.

#### **ISSUE**

Whether the Commission erred by ordering Foster to pay attorney's fees to Sanders.

#### **HOLDING**

Because Foster did not cause Sanders to incur additional attorney's fees, and because Sanders could have merely awaited the Commission's ruling on Corsby's motion, the Commission erred by ordering Foster to pay attorney's fees to Sanders. Therefore, the Court of Appeals reversed and rendered the judgment of the Mississippi Workers' Compensation Commission.

#### **DISSENT**

Presiding Judge Carlton argued that the Commission did not abuse its discretion because Sanders's counsel was justified in pursuing a timely closing of Foster's claim. Furthermore, she argued that it was proper for Sanders's counsel to attend the Commission's hearing.

#### **Reversed & Rendered - 2019-WC-00581-COA (Apr. 7, 2020)**

Opinion by Presiding Judge Wilson - Dissent by Presiding Judge Carlton  
(Mississippi Workers' Compensation Commission)

Chuck McRae & James (Jay) R. Foster II for Appellant - Bryan Gray Bridges for Appellees

Briefed by [Eli Scott](#)

[Click here to view the full opinion](#)

## HERRING V. MISS. DEP'T. OF CORR.

### CIVIL - STATE BOARDS AND AGENCIES

**ADMINISTRATIVE REMEDIES - PROCEDURE - JUDICIAL REVIEW** - Under Mississippi law, the failure to timely seek judicial review of an administrative remedy program decision results in dismissal

**ADMINISTRATIVE REMEDIES - PROCEDURE - JURISDICTIONAL REQUIREMENTS** - The prison mailbox rule applies to the jurisdictional thirty-day requirement and a prisoner satisfies this rule if he submits his complaint for mailing with the prison officials within this time period

#### FACTS

While serving time for rape, Ernest Herring asked the Mississippi Department of Corrections (“MDOC”) to place him in its meritorious earned time (“MET”) program, which grants meritorious earned time as distinguished from earned time for good conduct and performance. MDOC denied the request on grounds that Herring’s mandatory sentence and current charge rendered him ineligible. Herring sought review of the denial, arguing that MDOC’s policy was contrary to the MET statute. MDOC denied his claim a second time and Herring sought judicial review. The Hinds County Circuit Court found that MDOC had not acted arbitrarily or capriciously since Herring was not entitled to participate in the program. Herring appealed.

#### ISSUE

Whether the trial court acted arbitrarily or capriciously in denying Herring’s request to participate in the MET program based on his charges and mandatory sentence.

#### HOLDING

Because Herring filed his request for judicial review over twenty days after the time to seek judicial review of MDOC’s decision and outside the thirty-day time period set by State law, the circuit court lacked jurisdiction over the request for judicial review. Therefore, the Court of Appeals vacated the judgment of the Hinds County Circuit Court.

**Vacated - 2018-CP-01560-COA (Apr. 7, 2020)**

Opinion by Judge McCarty

Hon. Jeff Weill Sr. (Hinds County Circuit Court, First Judicial Dist.)

*Pro se* for Appellant - Darrell Clayton Baughn (Att’y Gen. Office) for Appellee

Briefed by [Sarah Schofield](#)

[Click here to view the full opinion](#)

## LINDSAY V. LINDSAY

### CIVIL - DOMESTIC RELATIONS

**CIVIL PROCEDURE - CONTEMPT - VAGUE ORDER** - An order that is overly vague, ambiguous, and unclear is incomplete and unenforceable

**FAMILY LAW - DIVORCE - HABITUAL CRUEL & INHUMAN TREATMENT** - Cruel and inhuman treatment is defined as conduct that either: (1) endangers life, limb, or health, or creates a reasonable apprehension of such danger and renders the relationship unsafe for the offended party or (2) is so unnatural and infamous as to make the marriage revolting to the non-offending spouse and render it impossible to carry out the duties of the marriage, thus destroying the basis for its continuance

**FAMILY LAW - DIVORCE - DURESS** - An agreement that is signed without an attorney present and with incarceration being certain if the agreement is not signed is considered duress and is unenforceable

#### FACTS



Bruce and Paula Lindsay were married in 2000 and had a child together in 2001. In 2014, Paula filed a complaint for divorce on the ground of habitual cruel and inhuman treatment or, in the alternative, irreconcilable differences. The trial judge entered a temporary ruling that ordered Bruce “to continue paying everything that he is paying now” without specifying the exact amount. However, a written temporary order was not entered. The trial court later appointed CPA Christy Pickering to determine each party’s actual financial interest, as each believed the other had more money than was being reported. After the original judge recused himself, a subsequent judge entered a temporary order requiring Bruce to pay all obligations and expenses he was paying prior to June 13, 2014. However, similar to the first order, the judge did not specify any exact amount or obligation that Bruce was expected to pay. Subsequently, the trial court entered an order stating that Bruce was in arrears in the total amount of \$77,657.25 from the original ruling. The trial court attributed \$37,500 of that total amount to unpaid support. However, the trial court never addressed child or alimony support in the prior rulings. The trial court ordered Bruce to pay the full amount to Paula or he would be incarcerated until he paid in full. The trial court found Bruce in contempt for a total of \$105,470.67 and placed him in the county jail for his failure to pay, despite the fact that Bruce could not pay that amount because he had previously been terminated from his job and had to file for bankruptcy. Bruce was transported to a hearing on his contempt, which ultimately developed into a divorce hearing. Bruce, who did not have a lawyer and any way to pay the amount owed to Paula, agreed to deed the marital home and a townhome to Paula. Bruce also agreed to pay \$905,470.67 in lump-sum alimony, \$1,400 in monthly child support, Paula’s attorney’s fees, and Pickering’s expert fees and attorney fees. The trial court entered the divorce judgment enforcing the aforementioned obligations and ordered Bruce to pay Pickering’s fees in full. Bruce appealed.

### ISSUES

Whether (1) the contempt order was too vague to enforce; (2) there was sufficient proof for the chancellor to grant a divorce on the ground of habitual cruel and inhuman treatment; (3) the chancery court erred in ordering Bruce to pay Pickering’s full expert and attorney’s fees; and (4) the chancery court erred in ordering Bruce to pay Paula’s attorney’s fees.

### HOLDING

(1) Because the trial court never addressed any specific obligations or specific amounts that Bruce was required to pay, the order of contempt was overly vague and was reversed. (2) Because Paula’s previous testimony regarding Bruce’s conduct towards her conflicted with her failure to deny Bruce’s requests for admissions regarding cruel and inhuman treatment, and because her testimony did not rise to the level of habitual cruel and inhumane treatment, the evidence was insufficient to grant a divorce on the ground of habitual cruel and inhuman treatment. (3) Because Bruce signed and agreed to the property settlement agreement under duress, both the property agreement and Pickering’s expert and attorney’s fees were set aside as a matter of law. (4) Because Bruce did not have an attorney, and because Bruce faced incarceration if he could not come to an agreement with Paula, the property settlement agreement was signed under duress, unenforceable, and vacated. Therefore, the Court of Appeals reversed, vacated in part, and remanded the judgment of the Harrison County Chancery Court.

### **Reversed, Vacated in Part, & Remanded - 2018-CA-00370-COA (Apr. 7, 2020)**

Opinion by Judge Lawrence

Hon. Michael H. Ward (Harrison County Chancery Court, First Judicial Dist.)

Reed Stanton Bennett for Appellant - Timothy Lee Murr, Thomas Wright Teel, Russell Scott Manning, & Nicholas Van Wiser for Appellees

Briefed by [John Forrest Kelly](#)

[Click here to view the full opinion](#)

## **ROBERSON V. COMM’R FISHER**

**CIVIL - OTHER**

**APPELLATE PROCEDURE - ADMINISTRATIVE AGENCIES - VENUE** - In an appeal from an administrative agency decision, venue is proper in the county where the defendant resides

**APPELLATE PROCEDURE - ADMINISTRATIVE REVIEW - STATUTE OF LIMITATIONS** - Pursuant to Miss. Code Ann. § 47-5-807, any offender who is aggrieved by an adverse decision rendered pursuant to an administrative review procedure may, within thirty days after receipt of the agency’s final decision, seek judicial review of the decision

**CRIMINAL PROCEDURE - SENTENCING - EARNED TIME** - Notwithstanding the broad language of Miss. Code Ann. § 47-5-142, eligibility for meritorious earned time is controlled by § 47-5-139, which provides that an inmate shall not be eligible for the earned-time allowance if the inmate was convicted of a sex crime

## **FACTS**

In 2009, Benjamin Roberson was convicted of sexual battery and sentenced to twenty years in the custody of the Mississippi Department of Corrections (“MDOC”). In October 2016, Roberson sought a reduction in his sentence from the MDOC for meritorious earned time. Through the Administrative Remedy Program (“ARP”), the MDOC denied the request because Roberson had been convicted of a sex crime. In November 2016, Roberson filed a motion for judicial review in the Issaquena County Circuit Court. The MDOC challenged the motion on the merits and raised several procedural defenses. The trial court denied Roberson’s motion on the merits. Roberson appealed.

## **ISSUES**

Whether the circuit court (1) properly dismissed because the MDOC was not made a party to the proceedings; (2) properly dismissed because the MDOC had not received or waived service of process; (3) properly dismissed because venue was improper; (4) properly dismissed because Roberson violated MDOC’s internal statute of limitations; and (5) erred in denying Roberson’s motion on the merits.

## **HOLDING**

(1) Because the Court of Appeals has addressed the merits of prior cases concerning an appeal from an ARP in the past, although the MDOC was not included as a party, the issue was not grounds for dismissal. (2) Because judicial review of an ARP decision is not a new filing that would require service of process on MDOC, the circuit court did not lack personal jurisdiction over the MDOC. (3) Because Roberson was incarcerated in Issaquena County, venue was proper in the Issaquena County Circuit Court. (4) Because Roberson filed his motion for judicial review within the thirty-day appeal deadline, the circuit court had jurisdiction to consider it. (5) Because Roberson was convicted of a sex crime, the trial court properly denied his motion. Therefore, the Court of Appeals affirmed the judgment of the Issaquena County Circuit Court.

**Affirmed - 2018-CP-01465-COA (Apr. 7, 2020)**

Opinion by Judge Greenlee

Hon. M. James Chaney Jr. (Issaquena County Circuit Court)

*Pro se* for Appellant - Darrell Clayton Baughn for Appellee

Briefed by [Breland Parker](#)

[Click here to view the full opinion](#)

## **WEBB V. FORREST GEN. HOSP.**

### **CIVIL - MEDICAL MALPRACTICE**

**CIVIL PROCEDURE - SUMMARY JUDGMENT - POSTPONEMENT** - In order to postpone a summary judgment ruling, a party should file a motion under Miss. R. Civ. P. 56(f), and, in an affidavit, he must present specific facts as to why he cannot oppose the motion and must specifically demonstrate how postponement of a ruling on the motion will enable him to rebut the movant’s showing of the absence of a genuine issue of fact

**TORTS - MEDICAL MALPRACTICE - EXPERT OPINION** - In medical malpractice claims, a medical expert must identify and articulate the requisite standard that was not complied with, and must also establish that the failure was the proximate cause of the alleged injuries

**TORTS - CAUSATION - EXPERT OPINION** - The expert opinion of a doctor as to causation must be expressed in terms of medical probabilities as opposed to possibilities

### **FACTS**

Jerry Don Webb visited Forrest General Hospital's ("Forrest General") emergency department with complaints of shortness of breath and persistent cough. Mr. Webb was diagnosed with atrial fibrillation and later admitted into the hospital. Dr. Thad F. Waites recommended the use of a transesophageal echocardiogram ("TEE") to evaluate Mr. Webb's condition. Dr. Waites performed the TEE while Mr. Webb was under conscious sedation. During the procedure, Mr. Webb was agitated and coughing. The parties dispute the events that occurred during the procedure. Dr. Waites contends that when he withdrew the probe, he noticed a spot of blood on it. Dr. Waites then resumed the procedure and was able to successfully obtain the echocardiogram. According to Mr. Webb, the procedure log did not document the fact that he was coughing so hard that he sat up during the procedure. In the days following the procedure, Mr. Webb experienced traumatic pyriform sinus perforation (a rare complication of TEE) with significant bleeding and tearing of a pharyngeal off of the external carotid. Mr. Webb spent eight days in the intensive care unit on life-support systems so that the perforation could heal. Mr. Webb sued Forrest General, Dr. Waites, and Hattiesburg Clinic P.A. ("the Clinic"), alleging that his injured pyriform sinus was the result of the parties' negligence. The complaint also alleged damages for Mrs. Joyce Webb's loss of consortium. The Webbs designated Dr. James Rellas, a cardiologist, as their expert. In his medical affidavit, Dr. Rellas opined that Dr. Waites breached the requisite standard of care. Dr. Rellas failed to include any mention of the causation of Mr. Webb's injuries in his affidavit. Forrest General, Dr. Waites, and the Clinic eventually filed motions for summary judgment, arguing that the Webbs had failed to present expert testimony on causation. The Webbs argued that there were genuine issues of material facts in dispute, relying heavily on Dr. Rellas's affidavit. The Webbs also submitted a motion under Miss. R. Civ. P. 6(b) asking for an extension of the discovery deadline so that they could depose one of the Forrest General's experts. In one order, the Forrest County Circuit Court granted Dr. Waites's and the Clinic's motion for summary judgment, finding that the Webbs had not meet their burden on the element of causation. In a separate order, the Forrest County Circuit Court granted Forest General's motion for summary judgment on similar grounds. The trial court added that the Webbs had failed to request additional discovery time under Miss. R. Civ. P. 56(f), and that the motion under Miss. R. Civ. P. 6(b) would not rehabilitate the Webbs' failure to prove causation against Forrest General. The Webbs appealed.

### **ISSUES**

Whether (1) the trial court abused its discretion by denying the Webbs' motion to extend the discovery deadline and (2) Dr. Waites and the Clinic were entitled to summary judgment.

### **HOLDING**

(1) Because the Webbs failed to request additional time to conduct discovery against Forrest General, and because the information they claimed they lacked would not have established negligence by Forrest General employees or causation for Mr. Webb's injury, the trial court did not abuse its discretion in denying Webb's motion to extend the discovery deadline. (2) Because Dr. Rellas's medical affidavit failed to provide any causal connection between Dr. Waites's alleged negligence and the injury, the trial court did not err in granting Dr. Waites and the Clinic's motion for summary judgment. Therefore, the Court of Appeals affirmed the judgment of the Forrest County Circuit Court.

**Affirmed - 2018-CA-01301 (Apr. 7, 2020)**

Opinion by Judge McDonald

Hon. Jon Mark Weathers (Forrest County Circuit Court)

Daniel Owen Lofton for Appellants - Matthew D. Miller, Nicholas Kane Thompson, J. Robert Ramsay, & John Burley Howell III for Appellees

Briefed by [Bryant Carlton](#)

[Click here to view the full opinion](#)

---

## *COURT OF APPEALS - POST-CONVICTION RELIEF*

### **KEYES V. STATE**

#### **CIVIL - POST-CONVICTION RELIEF**

**POST-CONVICTION RELIEF - PROCEDURAL BAR - EXCEPTIONS** - The movant bears the burden of proving an exception applies to the Uniform Post-Conviction Collateral Relief Act's procedural bars

**POST-CONVICTION RELIEF - UPCCRA CLAIMS - WAIVER** - Under Mississippi's Uniform Post-Conviction Collateral Relief Act ("UPCCRA"), knowingly and voluntarily entering a guilty plea as a habitual offender, coupled with confirming the prior convictions at the sentencing hearing, waives a petitioner's right to object to a lack of judicial-district specificity in a habitual offender indictment

**POST-CONVICTION RELIEF - INEFFECTIVE ASSISTANCE OF COUNSEL - BURDEN OF PROOF** - A claimant of ineffective assistance of counsel bears the burden of proof to show that: (1) counsel's performance was deficient and (2) the deficiency prejudiced his defense

**POST-CONVICTION RELIEF - INEFFECTIVE ASSISTANCE OF COUNSEL - SPECIFICITY** - Allegations of ineffective assistance of counsel must be made with specificity and detail, and are assessed by the totality of the circumstances

#### **FACTS**

In September 1983, Juarez Keyes pled guilty to numerous crimes, including rape, robbery, burglary, aggravated assault, and breaking out of a closure after commission of a crime. For all but one of these crimes, the trial court sentenced Keyes as a habitual offender. Since his sentencing, Keyes has filed multiple post-conviction relief ("PCR") motions, all of which were denied. In November 2017, Keyes filed another PCR motion, styled as a "Motion for Post-Conviction Collateral Relief to Vacate Habitual Sentencing." In this motion, Keyes asserted that his habitual-offender indictments were invalid because they did not identify the specific Cook County, Illinois judicial district in which his prior felony convictions occurred, as required by Miss. Unif. Cir. & County Ct. Prac. R. 11.03. At the time of Keyes's sentencing, another rule provided this same requirement, although both rules were superseded by the Mississippi Rules of Criminal Procedure, which became effective July 1, 2017. Keyes also asserted ineffective assistance of counsel due to his counsel's failure to object to the alleged defect in the indictments. The circuit court denied Keyes's PCR motion. Keyes appealed.

#### **ISSUES**

Whether the circuit court erred in (1) denying Keyes's PCR motion; (2) finding Keyes waived his right to object to the error on his multiple-offender indictment; and (3) finding Keyes waived his ineffective-assistance-of-counsel claim.

#### **HOLDING**

(1) Because PCR motions are procedurally barred by both successive motions and a three-year post-conviction limitation, and because the exceptions of extraordinary circumstances or an error affecting certain fundamental rights did not apply, the circuit court did not err in denying the motion. (2) Because Keyes knowingly and voluntarily entered a guilty plea as a habitual offender and confirmed his prior convictions at his sentencing hearing, the circuit court did not err in finding Keyes waived his right to object to the error on his multiple-offender indictment. (3) Because Keyes's voluntary guilty plea waived claims of ineffective-assistance-of-counsel, and because Keyes's attorney's alleged ineffective performance did not proximately cause the plea, the circuit court did not err in finding Keyes waived his ineffective-assistance-of-counsel claim. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Circuit Court.

**Affirmed - 2018-CP-01660-COA (Apr. 7, 2020)**

Opinion by Judge C. Wilson

Hon. Jeff Weill Sr. (Hinds County Circuit Court, First Judicial Dist.)

*Pro se* for Appellant - Matthew Wyatt Walton (Att'y Gen. Office) for Appellee

Briefed by [Frank Wood](#)

[Click here to view the full opinion](#)

## PETERSON V. STATE

### CIVIL - POST-CONVICTION RELIEF

**POST-CONVICTION RELIEF - PROBATION REVOCATION - TIMELINESS** - Probation may be lawfully revoked beyond the probationary period if a revocation petition is filed prior to the end of the probationary period, an act deemed to toll the running of the probationary period, and the State acts on the petition with a reasonable time

**POST-CONVICTION RELIEF - PROBATION REVOCATION - DUE PROCESS** - Probation revocation hearings require only minimum due process standards, including: (1) written notice of the claimed violations; (2) disclosure to the probationer of the evidence against him; (3) an opportunity to be heard in person and to present witnesses and documentary evidence; (4) the right to confront and cross-examine adverse witnesses (unless a hearing officer finds good cause for not allowing such confrontation); (5) a neutral and detached hearing body or officer; and (6) a written statement by the fact finder as to the evidence relied on and the reasons for revoking probation

#### FACTS

In August 2006, Justin Peterson pled guilty to one count of grand larceny. The circuit court sentenced him to serve ten years in the custody of the Mississippi Department of Corrections (“MDOC”), with the entire period of incarceration pending completion of five years of probation. Peterson’s five year probationary period began to run on September 5, 2006 and would expire on September 5, 2011. The court also ordered Peterson to pay a \$1,500 fine, restitution, and court costs. In August 2011, a MDOC officer filed an affidavit, alleging Peterson had violated the terms of his probation. Subsequently, the circuit court issued a warrant for his arrest on August 18, 2011, almost a month before his probationary period would end. Upon execution of the arrest warrant, Peterson signed three waivers of rights relating to his preliminary probation hearing. Peterson admitted to violating the terms of his probation and, as a result, the circuit court revoked his probation and sentenced him to serve five years in custody with the remainder to be served on post-release supervision. Peterson then filed a post-conviction relief (“PCR”) motion, claiming his probation was unlawfully revoked because it was revoked after his probationary period had expired. The circuit court denied his PCR motion. Peterson appealed.

#### ISSUES

Whether (1) Peterson’s probation was unlawfully revoked and (2) Peterson was denied due process of law by not being informed of his right to counsel.

#### HOLDING

(1) Because the circuit court issued an arrest warrant prior to the end of Peterson’s probationary period, and because this was an act deemed to toll the running of the probationary period, the circuit court lawfully revoked his probation. (2) Because a defendant does not necessarily have a right to counsel at probation-revocation hearings, and because Peterson signed a waiver of right to preliminary probation revocation hearing, he was not denied due process of law. Therefore, the Court of Appeals affirmed the judgment of the Pearl River County Circuit Court.

**Affirmed - 2019-CP-00407-COA (Apr. 7, 2020)**

Opinion by Judge Greenlee

Hon. Claiborne McDonald (Pearl River County Circuit Court)

*Pro se* for Appellant - Abbie Eason Koonce (Att’y Gen. Office) for Appellee

Briefed by [Matthew Rhea](#)

[Click here to view the full opinion](#)

## WILSON V. STATE

### CIVIL - POST-CONVICTION RELIEF



**CIVIL PROCEDURE - APPEALS - PROCEDURAL BARS** - Pursuant to Miss. Code Ann. § 99-39-23(6), any order denying or dismissing a PCR motion is a bar to a second or successive PCR motion

**CIVIL PROCEDURE - APPEALS - INEFFECTIVE ASSISTANCE OF COUNSEL** - A claim of ineffective assistance of counsel supported only by the movant's own affidavit fails to meet the pleading requirements of the Uniform Post-Conviction Collateral Relief Act

### FACTS

In March 2017, Ronald Wilson pled guilty to simple assault on a law enforcement officer and felony shoplifting, each offense occurring separately. The circuit court sentenced Wilson to serve five years for the simple assault and ten years for the felony shoplifting with his sentences set to run consecutively. In February 2019, Wilson asserted in a second petition for post-conviction relief ("PCR") that the statute of limitations had expired when the circuit court entered his plea and that he received ineffective assistance of counsel. The circuit court denied Wilson's second motion for post-conviction relief. Wilson appealed.

### ISSUES

Whether the circuit court erred in (1) denying Wilson's petition for post-conviction relief and (2) denying Wilson's claim for ineffective assistance of counsel.

### HOLDING

(1) Because the circuit court denied Wilson's first petition for post-conviction relief, which raised the same statute of limitations argument, his current motion was successive writ barred and he could not relitigate the issue. (2) Because Wilson's petition offered only his own affidavit to support his claim of ineffective assistance of counsel, his claim was without merit. Therefore, the Court of Appeals affirmed the judgment of the Madison County Circuit Court.

**Affirmed - 2019-CP-00598-COA (Apr. 7, 2020)**

Opinion by Judge C. Wilson

Hon. John Huey Emfinger (Madison County Circuit Court)

*Pro se* for Appellant - Billy L. Gore (Att'y Gen. Office) for Appellee

Briefed by [Charles Matranga](#)

[Click here to view the full opinion](#)

---

## ***COURT OF APPEALS - CRIMINAL CASES***

### **BAUGHMAN V. STATE**

#### **CRIMINAL - FELONY**

**CRIMINAL LAW - EVIDENCE - SUFFICIENCY** - On appeal, the issue is not whether the reviewing court would have found the defendant guilty; rather, the conviction must be affirmed if there was sufficient evidence for any rational trier of fact to have rendered a guilty verdict

**CRIMINAL LAW - EVIDENCE - WEIGHT OF THE EVIDENCE** - A verdict will be disturbed only when it is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable justice

### FACTS

Officer Jason Cook stopped Terry Baughman for driving with one headlight. Jason noticed Baughman had slow, slurred speech; glossy, bloodshot eyes; and smelled of marijuana. Jason asked Baughman to step out of the vehicle so he could pat him down. Jason found a small metal pipe and a half-smoked cigarillo on Baughman, both of which contained a burnt green, leafy substance. Jason also found a container of suboxone strips on Baughman and open containers of alcohol in the vehicle. Jason then called the DUI officer, Officer Nate Cook, to the scene. Nate asked Baughman to submit to a blood or urine test, which Baughman refused. According to Nate, Baughman exhibited an unsteady gait,

eyelid tremors, lethargic movements, slurred speech, and smelled of marijuana. Nate then administered several field sobriety tests, all of which Baughman failed. Nate arrested Baughman and transported him to jail. After he arrested Baughman, Nate found a prescription pill bottle in Baughman's vehicle that contained five pills of oxycodone, a Schedule II controlled substance. At trial, the jury found Baughman guilty of possessing oxycodone, in violation of Miss. Code Ann. § 41-29-139(c); and driving under the influence of any other substance, in violation of Miss. Code Ann. § 61-11-30(2)(d). Baughman appealed.

## **ISSUES**

Whether (1) there was sufficient evidence to support the jury's guilty verdict for driving under the influence of any other substance; (2) the jury's guilty verdict for driving under the influence of any other substance was against the overwhelming weight of the evidence; and (3) it was plain error for the trial court to admit portions of the officers' testimony without them being tendered and accepted as expert witnesses.

## **HOLDING**

(1) Because the Mississippi Supreme Court has held that evidence of bloodshot eyes, eyelid tremors, and failed field sobriety tests is sufficient to support a finding that a defendant was under the influence of marijuana, the jury's guilty verdict was supported by sufficient evidence. (2) Because the State presented sufficient evidence that Baughman was under the influence of marijuana, the jury's guilty verdict was not against the overwhelming weight of the evidence. (3) Because Baughman did not object at trial to the admission of the police officers' testimony without them being tendered and accepted as expert witnesses, the admission of the officers' testimony did not constitute plain error. Therefore, the Court of Appeals affirmed the judgment of the Marion County Circuit Court.

**Affirmed - 2019-KA-00410-COA (Apr. 7, 2020)**

Opinion by Judge Greenlee

Hon. Anthony Alan Mozingo (Marion County Circuit Court)

W. Daniel Hinchcliff (Pub. Def. Office) for Appellant - Barbara Wakeland Byrd (Att'y Gen. Office) for Appellee

Briefed by [Michael Sturgus](#)

[Click here to view the full opinion](#)

## **CHISHOLM V. STATE**

### **CRIMINAL - FELONY**

**CRIMINAL LAW - FELONY FLEEING - ELEMENTS** - Pursuant to Miss. Code Ann. § 97-9-72(1)-(2), the driver of a vehicle who is given a signal by law enforcement to bring his motor vehicle to a stop, willfully fails to obey this signal by law enforcement, and operates the vehicle in a manner that indicates a reckless or willful disregard for human safety is guilty of felony fleeing

**CRIMINAL PROCEDURE - JURY - BIAS** - A defendant bears the burden of showing that the jury was biased or less than impartial

**CRIMINAL LAW - FELONY FLEEING - MIRANDA RIGHTS** - Being placed under arrest and being advised of *Miranda* rights are not elements for the crime of felony fleeing

## **FACTS**

Deputy Lemuel Rutledge approached Tony Chisholm at a nightclub in Woodville, Mississippi. Deputy Rutledge intended to arrest Chisholm because he had several warrants out for his arrest. After a brief exchange, Chisholm got in his car and crossed the parking lot of the nightclub to exit through a neighboring parking lot. Deputy Rutledge turned on his blue lights and attempted to pull Chisholm over. Instead of pulling over, Chisholm fled. As police pursued him, Chisholm drove erratically and violated several traffic laws. Chisholm eventually escaped from the pursuit, but law enforcement found and arrested him several days later. Chisholm was indicted for felony fleeing. At trial, Chisholm filed a motion for directed verdict, which was denied. The Wilkinson County Circuit Court found Chisholm guilty of felony fleeing and sentenced him to five years in the Mississippi Department of Corrections. Chisholm appealed.

## ISSUES

Whether (1) there was insufficient evidence to support Chisholm's conviction; (2) Chisholm was not afforded an impartial jury; (3) the deputy failed to inform Chisholm that he was under arrest or read him his *Miranda* rights; and (4) the trial court gave a jury instruction on the lesser included offense of misdemeanor fleeing without including it as an option on the verdict form.

## HOLDING

(1) Because Chisholm failed to stop after the deputy turned on his blue lights, drove over the speed limit, ran a stop sign, passed vehicles in a no-passing zone, and made an erratic turn, there was sufficient evidence to support Chisholm's conviction. (2) Because Chisholm presented no evidence to support his assertion that the jury was biased against him, this issue lacked merit. (3) Because being placed under arrest and being advised of *Miranda* rights are not required elements of felony fleeing, this issue lacked merit. (4) Because the record indicated that the verdict form provided to the jury included an option of the lesser included offense, this issue was meritless. Therefore, the Court of Appeals affirmed the judgment of the Wilkinson County Circuit Court.

**Affirmed - 2018-KA-01439-COA (Apr. 7, 2020)**

Opinion by Judge C. Wilson

Hon. Lillie Blackmon Sanders (Wilkinson County Circuit Court)

Erin E. Briggs (Pub. Def. Office) & *Pro se* for Appellant - Lisa L. Blount (Att'y Gen. Office) for Appellee

Briefed by [Matthew Russ](#)

[Click here to view the full opinion](#)

### **MISSISSIPPI CASES EDITOR**

**ANNA MCLEMORE**

### **ASSOCIATE CASES EDITORS**

**MELISSA FENWICK**

**JOHN FORREST KELLY**

**MATTHEW RHEA**

**MATTHEW RUSS**

**LUKE SEYMOUR**

**FRANK WOOD**

*Thank you for supporting the Mississippi Law Journal.*

Questions or comments: Anna McLemore, [newsletter@mississippilawjournal.org](mailto:newsletter@mississippilawjournal.org)

*All subscribers to BriefServ traditionally receive access to our website with archived case briefs since January 2007. Currently, our digital database is under construction. Requests for previous editions of the Newsletter can be made to Anna McLemore, [newsletter@mississippilawjournal.org](mailto:newsletter@mississippilawjournal.org). If you have questions about accessing or using the BriefServ website, please contact us at [support@mississippilawjournal.org](mailto:support@mississippilawjournal.org)*