

MISSISSIPPI SUPREME COURT DECISIONS – MARCH 12, 2020***SUPREME COURT - CIVIL CASES*****CARSON V. LINLEY****CIVIL - TORTS - OTHER THAN PERSONAL INJURY & PROPERTY DAMAGE**

CIVIL PROCEDURE - JURISDICTION - VENUE - Civil actions over which the circuit court has original jurisdiction shall be commenced in the county where the defendant resides, or, if the defendant is a corporation, in the county of its principal place of business, or in the county where a substantial alleged act or omission occurred or where a substantial event that caused the injury occurred

CIVIL PROCEDURE - VENUE - SUBSTANTIAL ACTS - Even if an act or omission did not cause the injury, it can nevertheless establish venue if it is both substantial and alleged by the plaintiff

FACTS

Following Kimberly Carson Linley and Charles Bradley Carson's divorce, the Oktibbeha County Chancery Court entered a money judgment against Carson. Carson appealed the judgment to the Mississippi Supreme Court and filed a supersedeas appeal bond, which the chancery clerk of Oktibbeha County stamped as filed but failed to electronically file. While Carson's appeal was pending, Linley's attorney, Jay Howard Hurdle, executed the money judgment and had writs of garnishments issued. These writs of garnishments were issued to Carson's employer, the Scott County Board of Supervisors, as well as his BancorpSouth accounts in Scott County. Carson sued Linley and Hurdle in the Circuit Court of Scott County, alleging that they conspired to seize his funds in violation of the appeal bond. Linley and Hurdle filed motions to transfer venue to Oktibbeha County and Carson contested the motions. During these proceedings, the Mississippi Supreme Court issued a stay of Carson's appeal and ordered that the Oktibbeha County Chancery Court determine whether Carson properly filed the supersedeas appeal bond. The Oktibbeha County Chancery Court ruled that Carson had properly filed his supersedeas appeal bond. During oral arguments before the Circuit Court of Scott County on the motions to transfer venue, Carson argued that, pursuant to Miss. Code Ann. § 11-11-3(1)(a)(i), venue was proper in Scott County because substantial acts, as well as substantial events that caused the injury, occurred in Scott County. Linley and Hurdle argued that they took no action in Scott County and that the proper venue was in Oktibbeha County. The Scott County Circuit Court agreed with Linley and Hurdle and granted the motions to transfer venue to the Circuit Court of Oktibbeha County. Carson appealed.

ISSUE

Whether the trial court erred in transferring venue from the Circuit Court of Scott County to the Circuit Court of Oktibbeha County.

HOLDING

Because venue is proper in the county where a substantial alleged act or omission occurred or where a substantial event that caused the injury occurred, and because the service of the writs of garnishment was a substantial alleged act in furtherance of an alleged conspiracy, Scott County, Mississippi was a permissible venue. Therefore, the Supreme Court reversed the judgment of the Scott County Circuit Court.

DISSENT

Justice Griffis argued that Oktibbeha County was the only proper venue. He asserted that the substantial alleged act that gave rise to Carson's conspiracy claim was the issuance of the writs of garnishment, which occurred in Oktibbeha County, and not the service of the writs of garnishment. As a result, he would affirm the circuit court's judgment.

Reversed & Remanded - 2019-IA-00170-SCT (Mar. 12, 2020)

En Banc Opinion by Justice Coleman - Dissent by Justice Griffis
Hon. Mark Sheldon Duncan (Scott County Circuit Court)
Thomas L. Tullos for Appellant - Lydia Quarles & J. Wyatt Hazard for Appellees
Briefed by [Melissa Fenwick](#)

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EVANS V. STATE

CIVIL - DEATH PENALTY - POST CONVICTION

POST-CONVICTION - INEFFECTIVE ASSISTANCE OF COUNSEL - PREJUDICE - Failure to present a cohesive case in mitigation can be deficient and prejudicial, meeting the two-prong ineffective assistance test, which involves determining: (1) whether the attorney failed to render reasonable effective assistance under prevailing norms and (2) if prejudice resulted from the trial lawyer's ineffective performance

POST-CONVICITION - DEATH PENALTY - MENTAL ILLNESS - The United States Supreme Court has never held that mental illness removes a defendant from the class of persons who are constitutionally eligible for the death sentence

FACTS

In August 2013, a Hancock County Circuit Court jury found Timothy Evans guilty of capital murder, with robbery being the underlying felony. The State incorporated all testimony, evidence, and exhibits from the guilt phase of the trial into the sentencing phase. Evans presented two witnesses during sentencing: Dr. Robert M. Storer and Dr. Marc Zimmerman. Dr. Storer performed a forensic mental health evaluation of Evans and Dr. Zimmerman performed a mental evaluation of Evans to determine mitigating circumstances. Both witnesses were accepted as experts. The jury ultimately decided that the mitigating circumstances were insufficient and Evans was sentenced to death. In June 2017, the Supreme Court of Mississippi affirmed Evans's conviction and death sentence. In September 2017, the court denied a motion for rehearing. In June 2018, the United States Supreme Court denied Evans's petition for writ of certiorari. In October 2018, a Motion for Post-Conviction Relief or in the Alternative for Leave to Proceed in Trial Court with a Petition for Post-Conviction Relief was filed on Evans's behalf by the Mississippi Office of Capital Post-Conviction Counsel ("OCPCC"), claiming that Evans was entitled to relief because his permanent mental illness barred him from the death penalty and that Evans's counsel failed to investigate and present all evidence available for mitigation, object to an improper argument by the state, and communicate a plea offer.

ISSUES

Whether Evans was entitled to post-conviction collateral relief (1) based on ineffective assistance of trial counsel and (2) because he should be barred categorically from the death penalty due to permanent mental illness.

HOLDING

(1) Because a three page affidavit with speculative information was the only additional evidence presented, the prosecutor did not make inappropriate comments that presented *Strickland* level prejudice, and Evans failed to provide affidavits to contradict the record reflecting that Evans's trial counsel and the State made multiple representations to the trial court that there was no plea offer, there was no ineffective assistance of trial counsel. (2) Because the United States Supreme Court has never held that mental illness removes a defendant from the class of persons constitutionally eligible for the death sentence, Evans could not be categorically barred from the death penalty. Therefore, the Supreme Court denied Evans's motion for post-conviction relief because it failed to present a substantial showing of the denial of a state or federal right.

Post-Conviction Relief Denied - 2017-DR-01385-SCT (Mar. 12, 2020)

En Banc Opinion by Chief Justice Randolph
Hon. Lisa P. Dodson (Hancock County Circuit Court)
Benjamin H. McGee III (Cap. Post-Conviction Couns. Office) for Appellant - Cameron L. Benton (Att'y Gen. Office) for Appellee

Briefed by [Kaitlin Bethay](#)

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WANGLER V. WANGLER

CIVIL - DOMESTIC RELATIONS

FAMILY LAW - DIVORCE - HABITUAL CRUEL & INHUMAN TREATMENT - A divorce on the ground of cruel and inhuman treatment requires showing by a preponderance of the evidence conduct that either: (1) endangers life, limb, or health, or creates a reasonable apprehension of such danger, rendering the relationship unsafe for the party seeking relief or (2) is so unnatural and infamous as to make the marriage revolting to the nonoffending spouse and render it impossible for that spouse to discharge the duties of the marriage, thus destroying the basis for its continuance

FAMILY LAW - DIVORCE - HABITUAL CRUEL & INHUMAN TREATMENT - A marriage that is unpleasant and argumentative does not necessarily rise to the level of being so unnatural and infamous as to warrant granting a divorce on the ground of cruel and inhuman treatment

FAMILY LAW - HABITUAL CRUEL & INHUMAN TREATMENT - CAUSAL CONNECTION - In a divorce on the ground of cruel and inhuman treatment, the offended spouse must show a causal connection between the offending spouse's conduct and the impact on the offended spouse

FACTS

Karrah and Richard Wangler were married in September 2016 and had one child together. The couple separated in December 2017. In January 2018, Karrah filed a complaint for divorce on the ground of habitual cruel and inhuman treatment or, alternatively, irreconcilable differences. Richard later filed an answer and a counterclaim for divorce on the ground of habitual cruel and inhuman treatment or, alternatively, irreconcilable differences. The chancellor set the matter for trial and temporarily ordered joint legal custody of their child to Richard and Karrah, with Karrah having temporary physical custody subject to Richard's visitation. On the day before the trial, Richard moved to withdraw his counterclaim for divorce and Karrah moved to amend her complaint for divorce to allege spousal domestic abuse. The chancellor granted Richard's motion and allowed him to withdraw his counterclaim for divorce but denied Karrah's motion to amend her complaint. At the conclusion of Karrah's case-in-chief, she moved to amend her complaint to conform to the evidence presented during her case in chief pursuant to Miss. R. Civ. P. 15(b). The trial court granted her motion and Karrah's complaint for divorce was amended. Richard then moved to dismiss Karrah's complaint for divorce due to her failure to prove habitual cruel and inhuman treatment. The chancellor found that Karrah failed to present adequate proof of habitual cruel and inhuman treatment, granted Richard's motion to dismiss, and dismissed Karrah's complaint for divorce. Karrah appealed.

ISSUES

Whether the trial court erred in (1) denying Karrah's motion to amend her complaint and (2) dismissing Karrah's complaint for divorce.

HOLDING

(1) Because Karrah had ample time to amend her complaint to conform with the amended standard for habitual cruel and inhuman treatment pursuant to Miss. Code Ann. § 93-5-1, which went into effect six months before Karrah filed for divorce, the trial court did not err in denying Karrah's motion to amend her complaint. (2) Because Karrah did not provide any evidence that Richard was the cause of her sleep deprivation, isolation from her family and friends, or that he abandoned her, and because her accounts of Richard becoming physical with her during the marriage and his false claims of infidelity did not rise to the level of habitual cruel and inhuman treatment, the trial court did not err in dismissing Karrah's complaint for divorce on the ground of habitual cruel and inhuman treatment. Therefore, the Supreme Court affirmed the judgment of the Lamar County Chancery Court.

CONCURRENCE IN PART/DISSENT IN PART

Presiding Justice Kitchens agreed with the majority that the trial court did not err in denying Karrah's motion to amend her complaint. However, he argued that Richard's conduct rose to the level sufficient for habitual cruel and inhuman treatment pursuant to Miss. Code Ann. § 93-5-1.

Affirmed - 2018-CA-01632-SCT (Mar. 12, 2020)

En Banc Opinion by Justice Griffis - Concurrence In Part/Dissent In Part by Presiding Justice Kitchens

Hon. Susan Rhea Sheldon (Lamar County Chancery Court)

David M. Sessums for Appellant - Chase Ford Morgan for Appellee

Briefed by [David Boydston](#)

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SUPREME COURT - ORDERS

BARNETT V. STATE

EN BANC ORDER

ORDER

Bobby Keith Barnett filed his eighth motion for post-conviction relief. Barnett filed the motion after the Mississippi Supreme Court, en banc, considered his seventh motion for post-conviction relief but before the Supreme Court entered its disposition on the seventh motion. The Supreme Court denied Barnett's seventh motion for post-conviction relief and subsequently warned Barnett that future frivolous filings may result not only in monetary sanctions, but also in restrictions on filing applications for post-conviction collateral relief or pleadings of that nature in forma pauperis. The issues raised in the eighth motion were identical to those previously considered and denied by the court. Because the Supreme Court issued its warning after Barnett had already filed the eighth motion, Barnett was not sanctioned. However, the Supreme Court specified that the warning of sanctions remains in effect and was applicable to all future filings in this matter. Therefore, the Supreme Court dismissed Barnett's eighth motion for post-conviction relief as moot.

OBJECTION IN PART

Presiding Justice King agreed that Barnett's application for post-conviction relief should be dismissed as moot but disagreed with the Supreme Court's finding that the application was frivolous and with its warning that future filings deemed frivolous may result in sanctions or filing restrictions. He argued that Barnett's application was not frivolous because it contained reasonable arguments. He further argued that the threat of monetary sanctions and restrictions on future filings would serve only as a way to punish or preclude a defendant from his or her lawful right to appeal. Rather, he argued that the Supreme Court should only deny or dismiss motions that lack merit.

Dismissed as Moot - 2015-M-01153 (Mar. 10, 2020)

En Banc Order by Justice Chamberlin - Objection in Part by Presiding Justice King

Briefed by [Nicole Broussard](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – MARCH 10, 2020
COURT OF APPEALS - CIVIL CASES

CRONIER V. ALR PARTNERS L.P.

CIVIL - REAL PROPERTY

DAMAGES - ATTORNEY'S FEES - AVAILABILITY - In the absence of a contractual agreement or statutory authority, attorney's fees may not be awarded except in cases in which punitive damages are proper

DAMAGES - PUNITIVE DAMAGES - BURDEN OF PROOF - For an award of punitive damages the plaintiff must generally demonstrate that the defendant acted with: (1) actual malice; (2) gross negligence which evidences a willful, wanton or reckless disregard for the safety of others; or (3) committed actual fraud

DAMAGES - ATTORNEY'S FEES - AVAILABILITY - An actual award of punitive damages is not a prerequisite for an award of attorney's fees and attorney's fees are warranted where awarding punitive damages would have been justified, even if punitive damages are not awarded; thus, attorney fees may be awarded instead of punitive damages

FACTS

Allen Cronier purchased a parcel of land that he believed comprised eighty acres, although he did not have a survey done to verify this before he bought the property. Cronier later had the property surveyed, which revealed that Cronier's parcel was instead only about seventy acres and there was a boundary issue with the adjoining property owned by Marshall and Austin Rainwaters ("the Rainwaterses"). After the land was surveyed, the parties met to discuss the property dispute and Cronier announced his intention to receive the entire eighty acres. Following this meeting, the Rainwaterses discovered that boundary markers had been removed and defaced. Additionally, Cronier conveyed the parcel of land to his granddaughter and erected a fence with gates around the property. The Jackson County Chancery Court found that the Rainwaterses acquired title by adverse possession of 9.57 acres that Cronier contended he owned. Additionally, the chancellor found that Cronier acted with actual malice and in clear disregard for the Rainwaterses' rights and thus ordered Cronier to pay costs and attorney's fees. Cronier appealed.

ISSUE

Whether the chancellor erred in awarding attorney's fees in lieu of punitive damages.

HOLDING

Because Cronier acted with actual malice based on his actions, Cronier's conduct justified an award of punitive damages and the chancellor did not err in awarding attorney's fees in lieu of punitive damages. Therefore, the Court of Appeals affirmed the judgment of the Jackson County Chancery Court.

Affirmed - 2018-CA-01551-COA (Mar. 10, 2020)

En Banc Opinion by Judge C. Wilson
Hon. Jaye A. Bradley (Jackson County Chancery Court)
Scott Corlew for Appellant - E. Foley Ranson for Appellees

Consolidated with:

Affirmed in Part; Reversed & Remanded in Part - 2016-CT-00521-COA (Dec. 12, 2017)

Hon. Jaye A. Bradley (Jackson County Chancery Court)
Scott Corlew for Appellants - E. Foley Ranson for Appellees
Briefed by [Haley Nutt](#)

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FOWLER V. ROGERS

CIVIL - PERSONAL INJURY

CIVIL PROCEDURE - MOTION TO DISMISS - FAILURE TO STATE A CLAIM - In determining whether to dismiss a lawsuit for failure to state a claim, the allegations in the complaint must be taken as true and there must be no set of facts that would allow the plaintiff to prevail

CIVIL PROCEDURE - DEFAULT JUDGMENTS - BALANCING TEST - When ruling on a motion to set aside a default judgment, the court must consider a three-part balancing test to determine: (1) the nature and legitimacy of the defendant's reasons for his default, i.e. whether the defendant has a good cause for default; (2) whether the defendant in fact has a colorable defense to the merits of the claim; and (3) the nature and extent of prejudice which may be suffered by the plaintiff if the default judgment is set aside

CIVIL PROCEDURE - DEFAULT JUDGMENTS - COLORABLE DEFENSE - The second factor of the default judgment balancing test, the presence of a colorable defense, outweighs the other two, and the Mississippi Supreme Court has encouraged trial courts to vacate a default judgment where the defendant has shown that he has a meritorious defense

FACTS

While remodeling a house, David Rogers developed issues with his skin and eyes after he was exposed to chemicals used to eliminate mold. Rogers filed a complaint against his employer, Herman Fowler, owner of Fowler Construction Company. In his complaint, Rogers alleged that Fowler breached his duty to provide a reasonably safe workplace and requested damages. Fowler was served the summons and complaint the same day. Six months later, Rogers requested an entry of default due to Fowler's failure to appear, plead, or defend against the allegations. One week later, Fowler responded, asserting that the claim was barred by workers' compensation laws and Rogers's complaint failed to state a claim upon which relief could be granted. In response, Rogers filed a motion to strike Fowler's answer and a motion for default judgment. Fowler's attorney claimed there was good cause for the delay in filing the answer because he relied on assurances from Rogers's attorney that entry of default would not be taken while Fowler attempted to obtain insurance coverage or resolve the matter. In addition, Fowler argued that he had a colorable defense because Rogers's complaint failed to state a claim and Rogers would not suffer any prejudice from setting aside the default besides having to litigate his claim. The circuit court held that Fowler failed to show good cause for delay and that Rogers would be prejudiced if the default judgment was set aside. As a result, the court granted Rogers's motion to strike Fowler's answer and entered default judgment against Fowler. Fowler appealed.

ISSUES

Whether the trial court erred in (1) granting default judgment to Rogers because his complaint failed to state a claim upon which relief could be granted and (2) denying Fowler's motion to set aside the default judgment.

HOLDING

(1) Because there was nothing in the record to suggest that Fowler qualified under the Mississippi Workers' Compensation Act, the complaint stated a claim upon which relief could be granted and the trial court did not err in granting default judgment. (2) Because Rogers's agreement not to pursue a default did not relieve Fowler's obligation to timely answer and Fowler did not show good cause for his failure to timely answer, because the fact that the Mississippi Workers' Compensation Act did not apply to the claims in this case meant that it did not constitute a colorable defense, and because Rogers would be prejudiced if the default was set aside based on the amount of time that had passed since the complaint and default were filed, all three prongs of the default judgment balancing test weighed in favor of Rogers and the circuit court did not err in denying Fowler's motion to set aside the default judgment. Therefore, the Court of Appeals affirmed the judgment of the Washington County Circuit Court.

CONCURRENCE IN PART/DISSENT IN PART

Judge C. Wilson concurred that Rogers's complaint stated a claim upon which relief could be granted because Fowler did not qualify under the Mississippi Workers' Compensation Act. Further, he concurred that there was not good cause for Fowler's failure to timely answer Rogers's complaint. However, he argued that Fowler's motion to set aside the default judgment articulated a colorable defense to Rogers's claims. In addition, based on the parties' five-month active

litigation of the issues related to Fowler's default, he argued that this revealed no undue prejudice solely from the delay. As a result, he determined that even though Fowler failed to show good cause for his default, the other two balancing test factors weighed in Fowler's favor.

Affirmed - 2018-CA-01532-COA (Mar. 10, 2020)

En Banc Opinion by Judge Greenlee - Concurrence in Part/Dissent in Part by Judge C. Wilson
Hon. W. Ashley Hines (Washington County Circuit Court)
Terris Caton Harris for Appellant - Frank Thackston & W. Dean Belk Jr. for Appellee
Briefed by [Brittany Brewer](#)

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MCHESTER V. MCHESTER

CIVIL - DOMESTIC RELATIONS

CIVIL PROCEDURE - MOTION FOR A NEW TRIAL - EXTENDED TIME FOR APPEAL - A timely motion for a new trial pursuant to Miss. R. Civ. P. 59 will extend the time for filing a notice of appeal from the underlying judgment, but a motion filed more than ten days after the entry of judgment will not extend the filing time

CIVIL PROCEDURE - FINAL JUDGMENT - REVIEW - An appeal from the denial of a Miss. R. Civ. P. 60(b) motion only brings up the order of denial itself for review and not the underlying judgment

FACTS

After Willie McChester failed to provide adequate evidence or any documentation to support his request to postpone his divorce trial, the court granted Dorothy McChester, Willie's ex-wife, a divorce on the ground of desertion. When Willie learned that a final judgment had been entered, he moved for a new trial, alleging that his motion for postponement should have been granted. Further, Willie also claimed that he did not receive a copy of the final judgment of divorce because it was sent to his old mailing address and email account that he no longer used. The court denied Willie's motion and claimed that he should have informed the clerk of his new mailing and email addresses, the motion was filed outside of the ten-day window prescribed by Miss. R. Civ. P. 59, and Willie presented no evidence that would have entitled him to relief under Miss. R. Civ. P. 60. Willie appealed.

ISSUES

Whether (1) Willie's Miss. R. Civ. P. 59 motion for a new trial extended the timeline for filing a motion for appeal from the underlying judgment of divorce; (2) the Court of Appeals could review the underlying divorce judgment under Miss. R. Civ. P. 60(b); and (3) the trial court abused its discretion by denying relief pursuant to Miss. R. Civ. P. 60(b).

HOLDING

(1) Because Willie filed his motion for a new trial forty-eight days after the trial court entered the underlying divorce judgment, which was outside of the ten day window required by Miss. R. Civ. P. 59, his motion for a new trial did not extend the time for filing a notice of appeal. (2) Because an appeal from the denial of a Miss. R. Civ. P. 60(b) motion only brought up the order of the denial itself for review, the Court of Appeals could not review the underlying final judgment of divorce. (3) Because Willie provided no evidence to support his claim that Dorothy's testimony at trial constituted fraud, and because Willie did not provide any documentation that his unspecified health issues prevented him from attending the trial, the trial court did not abuse its discretion by denying relief based on fraud or his motion to postpone trial. Therefore, the Court of Appeals affirmed in part and dismissed the appeal in part the judgment of the Harrison County Chancery Court.

Affirmed in Part & Appeal Dismissed in Part - 2018-CP-01369-COA (March 10, 2020)

Opinion by Presiding Judge Wilson
Hon. Jennifer T. Schloegel (Harrison County Chancery Court, First Judicial Dist.)
Pro se for Appellant - *Pro se* for Appellee
Briefed by [Reid Hudson](#)

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COURT OF APPEALS - POST-CONVICTION RELIEF

CARR V. STATE

CIVIL - POST-CONVICTION RELIEF

CRIMINAL PROCEDURE - GUILTY PLEA - VOLUNTARINESS - In order to be valid, a guilty plea must be entered voluntarily and intelligently, meaning that the defendant is advised concerning the nature of the charge against him and the consequences of the plea

CRIMINAL PROCEDURE - SENTENCING - HABITUAL OFFENDER - Substantiating a habitual offender conviction requires that: (1) the accused be properly indicted as a habitual offender; (2) the prosecution prove the prior offenses by competent evidence; and (3) the defendant be given a reasonable opportunity to challenge the prosecution's proof

CRIMINAL PROCEDURE - SENTENCING - DOUBLE JEOPARDY - Prior convictions that are constitutionally valid in and of themselves may appropriately be used to enhance punishments for subsequent convictions; a sentence enhancement does not set out separate elements of an underlying felony

FACTS

In three separate indictments, Gregory Carr was indicted for burglary ("Count I"), aggravated assault ("Count II") as a habitual offender, unlawful possession of a firearm by a felon as a habitual offender, and two counts of automobile burglary as a habitual offender. Carr entered a plea bargain with the State, in which he agreed to plead guilty to Count II and one count of automobile burglary as a habitual offender. In exchange for Carr's guilty plea, the State, intending to reference the Count I burglary charge, agreed to dismiss Count II. At the plea hearing, the charges were read to Carr and he acknowledged the charges, their consequences, and his previous convictions before he plead guilty. The circuit court entered a sentencing order reflecting the plea hearing and expressly found that Carr knowingly, willingly, and voluntarily plead guilty to aggravated assault. However, due to a clerical error, the circuit court order for nolle prosequi dismissing Count II transcribed the plead aggravated assault charge, rather than the burglary charge that was supposed to be dismissed, as Count II. As a result, Carr subsequently filed a motion to vacate his sentence as void and invalid. Instead, the circuit court amended the order for nolle prosequi. Carr appealed.

ISSUES

Whether the trial court erred in (1) accepting Carr's guilty plea to aggravated assault and (2) sentencing Carr as a habitual offender.

HOLDING

(1) Because Carr entered his guilty plea voluntarily and intelligently, the trial court did not err in accepting the guilty plea. (2) Because Carr acknowledged his prior convictions, the trial court did not err in sentencing Carr as a habitual offender. Therefore, the Court of Appeals affirmed the judgment of the Washington County Circuit Court.

Affirmed - 2018-CP-00669-COA (Mar. 10, 2020)

Opinion by Judge C. Wilson

Hon. W. Ashley Hines (Washington County Circuit Court)

Pro se for Appellant - Scott Stuart (Att'y Gen. Office) for Appellee

Briefed by [Eli Scott](#)

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SMITH V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - STATUTE OF LIMITATIONS - ILLEGAL SENTENCE - An illegal sentence is a judicially created exception to the three-year statute of limitations period of the Uniform Post-Conviction Collateral Relief Act

POST-CONVICTION RELIEF - HABITUAL OFFENDER - BIFURCATED HEARING - A petitioner's status as a habitual offender can be established at the entry of a guilty plea, making it unnecessary to have a separate bifurcated hearing

POST-CONVICTION RELIEF - SENTENCING - HABITUAL OFFENDER - Pursuant to Miss. Code Ann. § 99-19-81, prison sentences of over one year impact one's habitual offender status regardless of whether the sentences were suspended or probation was granted

FACTS

In November 2013, Clyzell Smith was indicted for possession of cocaine with the intent to distribute ("Count I") and possession of marijuana with the intent to distribute ("Count II"). Smith was indicted as both a second or subsequent drug offender and as a nonviolent habitual offender. After pleading guilty to Count I, Smith was sentenced to serve fifteen years in the custody of the Mississippi Department of Corrections as a habitual offender. In November 2018, Smith filed a motion for post-conviction relief ("PCR") in the Harrison County Circuit Court. He alleged that his sentence was illegal because he had been denied a bifurcated hearing on his habitual offender status and his prior convictions did not satisfy the requirements of the habitual offender statute. The circuit court denied Smith's motion and concluded that his claims were time-barred and without merit. Smith appealed.

ISSUES

Whether (1) Smith's sentence was illegal because he was denied a bifurcated hearing on his habitual offender status and (2) his status as a habitual offender was wrongfully determined under the habitual offender statute.

HOLDING

(1) Because Smith pled guilty, it was unnecessary to have a separate bifurcated hearing to determine his status as a habitual offender. (2) Because Smith was previously sentenced to seven years in prison, the trial court properly determined his habitual offender status. Therefore, the Court of Appeals affirmed the judgment of the Harrison County Circuit Court.

Affirmed - 2019-CP-00166-COA (Mar. 10, 2020)

Opinion by Presiding Judge J. Wilson

Hon. Roger T. Clark (Harrison County Circuit Court, First Judicial Dist.)

Pro se for Appellant - Jeffrey A. Klingfuss (Att'y Gen. Office) for Appellee

Briefed by [Luke Seymour](#)

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WOOD V. STATE

CIVIL - POST-CONVICTION RELIEF

INEFFECTIVE ASSISTANCE OF COUNSEL - REQUEST FOR NEW APPOINTED COUNSEL - PRESUMPTION OF COMPETENCY - Even in the presence of an apparent personality conflict between a movant and his attorney, counsel is presumed to be competent and a personality conflict is insufficient to constitute ineffective assistance of counsel where movant's attorney has performed actions assisting his client, such as: (1) filing pretrial motions; (2) performing an investigation into the case; (3) filing a motion for movant's mental evaluation; (4) cross-examining a witness at trial; or (5) making evidentiary objections

INEFFECTIVE ASSISTANCE OF COUNSEL - BURDEN OF PROOF - ADDITIONAL AFFIDAVITS -

When a movant's own affidavit in his ineffective assistance of counsel claim is contradicted by unimpeachable documents in the record, he must offer affidavits from others that: (1) plead his claim with specificity and (2) are supported by that individual's personal knowledge of the attorney client relationship during the time of representation

CIVIL PROCEDURE - GUILTY PLEA - VOLUNTARINESS - A movant's bare assertions that his guilty plea was involuntary does not overcome the detailed interrogation by the trial court during his plea colloquy or his sworn statements in his plea petition

FACTS

Daniel Nathan Wood pled guilty to child fondling and child exploitation charges. Wood was appointed counsel, who subsequently filed a Motion for Mental Examination to evaluate Wood. The motion was granted and the trial court ordered Dr. Criss Lott to evaluate Wood. After Wood's evaluation, Dr. Lott ultimately determined that Wood was competent to stand trial. Later, Wood filed a Petition to Enter a Plea of Guilty, pleading guilty to the child fondling and child exploitation charges. At the beginning of the plea hearing, the trial court asked Wood if he had any history of mental illness or emotional problems. When Wood responded that he did, the trial court conducted a competency hearing before proceeding with the plea hearing. At the competency hearing, Wood presented medical records relating to depression and anxiety that he suffered eighteen months before his plea hearing. Upon resuming the plea hearing, the State presented its factual basis for the charges and Wood did not make any objections. The trial court then advised Wood of the rights he was giving up by pleading guilty, the possible sentences, and other penalties he would face by pleading guilty. The trial court also asked Wood if anyone had tried to threaten, force, or offer him any money, put him under duress, or intimidate him in any manner to get him to plead guilty. Wood denied that any of these occurred and confirmed at his plea hearing that he had no complaints with his lawyer and that he was satisfied with his lawyer's services. Wood also stated it was his decision, not his lawyer's, to plead guilty to the crimes. After Wood plead guilty, but before his sentencing, Wood filed a letter addressed to the trial judge, asserting that he was too intimidated by his lawyer to ask questions about his plea and that the only reason he pled guilty was because his lawyer told him there was no other option. The letter also asserted that Wood's lawyer did not discuss Dr. Lott's report or Wood's discovery with him and that his lawyer would not return Wood's phone calls or letters. At the sentencing hearing, the trial court addressed Wood's written request for new counsel and allowed him to read a statement repeating the same assertions in the letter. After comparing these assertions to Wood's previous assertions at his plea hearing indicating his satisfaction with his lawyer's services, the trial court denied Wood's request and found that his complaints were unfounded and contradictory to his previous statements to the court under oath. Wood filed a motion for post-conviction relief, which the trial court denied. Wood appealed.

ISSUES

Whether (1) the trial court erred in denying Wood's request for new counsel; (2) Wood received ineffective assistance of counsel; (3) Wood's guilty plea was involuntary; (4) Wood was competent to enter a guilty plea; and (5) the trial court erred in failing to withdraw his guilty plea.

HOLDING

(1) Because Wood's lawyer filed a motion for his mental evaluation, diligently investigated the case, and cross-examined witnesses at trial, Wood's counsel could not be shown to have rendered ineffective assistance and his request for new appointed counsel was without merit. (2) Because the only affidavit Wood offered other than his own affidavit was from a former cellmate over a year before his guilty plea, Wood's ineffective assistance of counsel claim was without merit. (3) Because Wood only offered his own bare assertions to contradict both his previous interrogation by the court during his plea hearing and his sworn plea statement, he could not show that his guilty plea was involuntary. (4) Because the only evidence offered to contradict Dr. Lott's determination that Wood was competent to stand trial was medical records showing depression and anxiety eighteen months before his guilty plea, Wood failed to meet his burden of proving that he was incompetent to enter his guilty plea. (5) Because Wood did not file a written motion or explicitly make an oral request to withdraw his guilty plea, the trial court was within its discretion not to withdraw the guilty plea. Thus, the Court of Appeals affirmed the conviction of the DeSoto County Circuit Court.

Affirmed - 2018-CP-00889-COA (Mar. 10, 2020)

Opinion by Presiding Judge Carlton

Hon. Gerald W. Chatham Sr. (DeSoto County Circuit Court)
Pro se for Appellant - Matthew Wyatt Walton (Att'y Gen. Office) for Appellee
Briefed by [Charles Ellzey](#)

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COURT OF APPEALS - CRIMINAL CASES

SCHLEGEL V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - JURY INSTRUCTIONS - SPOILIATION - A defendant is not entitled to a spoliation instruction absent proof that the State destroyed the evidence with an intent to suppress the truth

CRIMINAL PROCEDURE - DISCOVERY - REQUIREMENTS - Pursuant to Miss. R. Crim. P. 17.2, the State must turn over any exculpatory material concerning the defendant that is in the State's possession, custody, or control

CRIMINAL PROCEDURE - EVIDENCE - REVERSIBLE ERROR - The admission or exclusion of evidence constitutes reversible error only where a party can show prejudice or harm

CRIMINAL PROCEDURE - CONVICTION - CIRCUMSTANTIAL EVIDENCE - The State is allowed to prove crimes solely by circumstantial evidence, but such evidence must be sufficient to prove the defendant's guilt beyond a reasonable doubt and to the exclusion of every reasonable hypothesis consistent with innocence

FACTS

On June 14, 2015, Justyn Schlegel was incarcerated in the Neshoba County Jail. That morning, Schlegel and Rexdale Henry were the only two inmates housed in a cell known as Detox 2. At approximately 10:15 a.m., jail staff discovered Henry deceased in the cell. An autopsy revealed that Henry died from multiple blunt force trauma, with the manner of death being homicide. After members of the Neshoba County Sheriff's Department and the Mississippi Bureau of Investigation reviewed surveillance video recordings from around the time of the incident, Schlegel was arrested for Henry's murder. During discovery, the State offered three photographs into evidence depicting bruises on Schlegel's feet. Schlegel argued that the bruises on his feet resulted from plantar fasciitis and were not the result of an altercation with Henry. To support this theory, Schlegel sought to introduce testimony from Angela Skinner, a nurse practitioner, along with twelve pages of medical records. The trial court ultimately allowed Skinner to testify, but not as an expert witness. Additionally, the trial court admitted only two of the twelve pages of medical records into evidence. In November 2017, a jury trial was held and Schlegel moved to dismiss the charges against him based on spoliation of the evidence. At the time of the trial, the only surveillance video recordings in evidence were from a video camera facing Detox 2. Investigators testified there was another video camera showing a different angle of the cell, but stated that the camera facing Detox 2 contained better footage. Further, the investigators testified that the surveillance footage from the camera facing the other angle likely no longer existed because of the jail's roll over software. After hearing arguments from both parties, the trial court denied Schlegel's motion to dismiss. The jury subsequently found Schlegel guilty of second-degree murder. Schlegel then filed a post-trial motion for judgment notwithstanding the verdict or, alternatively, a new trial, which the trial court denied. Schlegel appealed.

ISSUES

Whether (1) the State violated Schlegel's due process rights by losing or otherwise failing to preserve surveillance video recordings from the camera showing a different angle of the jail; (2) the State's failure to turn over the recordings at issue constituted a *Brady* violation; (3) the trial court erred in refusing to grant Schlegel's requested jury instruction regarding spoliation of evidence; (4) the State's failure to preserve and provide the video recordings at issue violated Schlegel's discovery rights pursuant to Miss. R. Crim. P. 17.2; (5) the trial court erred in limiting the scope of Angela Skinner's testimony as well as corresponding medical records; (6) the trial court erred in allowing the State to introduce photographs of Schlegel's feet; (7) Schlegel was entitled to an acquittal as a matter of law pursuant to the *Weathersby* rule;

(8) the State failed to present evidence sufficient to support a conviction for second-degree murder; (9) the trial court erred in failing to grant Schlegel's motion for a new trial on the grounds that the verdict was against the overwhelming weight of the evidence; and (10) the cumulative effect of the alleged errors mandated reversal of Schlegel's conviction.

HOLDING

(1) Because the record reflected no evidence of bad faith by the State, Schlegel's due process rights were not violated. (2) Because introduction of the video recordings at issue would have been highly unlikely to affect the outcome, Schlegel failed to meet his burden of proving a *Brady* violation. (3) Because Schlegel failed to demonstrate that the State intentionally destroyed the recordings, the trial court did not err in refusing Schlegel's spoliation instruction. (4) Because the video recordings at issue were no longer in the State's possession, custody, or control, the State's failure to turn over the recordings did not amount to a discovery violation under Miss. R. Crim. P. 17.2. (5) Because Schlegel's theory of defense was neither prejudiced nor harmed, the trial court did not abuse its discretion in limiting Skinner's testimony as well as the corresponding medical records. (6) Because Schlegel failed to show that he was prejudiced by the photographs of his feet being entered into evidence, the trial court did not abuse its discretion in admitting the photographs. (7) Because Schlegel failed to bring up the *Weathersby* rule as a defense at trial or in his motion for a new trial, he was procedurally barred from raising the issue on appeal. (8) Because the facts and inferences from the circumstantial evidence could have led a reasonable jury to find that Schlegel was guilty beyond a reasonable doubt and to the exclusion of every reasonable hypothesis consistent with innocence, the evidence presented was sufficient to support a conviction for second-degree murder. (9) Because allowing the verdict to stand would not sanction an unconscionable injustice, the trial did not err in denying Schlegel's motion for a new trial. (10) Because no errors were found on appeal, the cumulative-error doctrine did not apply. Therefore, the Court of Appeals affirmed the judgment of the Neshoba County Circuit Court.

CONCURRENCE

Judge McCarty agreed with the majority's opinion in that it was based on faithfully applied Mississippi Supreme Court precedent. However, he pointed out the jarring disconnect between the high standard required to receive a spoliation instruction in a criminal case, which requires an intentional act, and the low standard in a civil case, which automatically raises a presumption of spoliation without the need to prove bad faith or intent. As a result, Judge McCarty argued that the lower, civil standard should also apply in criminal cases, where a person's liberty is at stake.

Affirmed - 2018-KA-00214-COA (Mar. 10, 2020)

Opinion by Presiding Judge Carlton - Concurrence by Judge McCarty

Hon. Christopher A. Collins (Neshoba County Circuit Court)

Justin Taylor Cook (Pub. Def. Office) for Appellant - Kaylyn Havrilla McClinton (Att'y Gen. Office) for Appellee

Briefed by [Harrison Smith](#)

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WARD V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - JURY INSTRUCTIONS - OBJECTIONS - On appeal, a defendant cannot complain alleged errors that he invited or induced himself or complain of an instruction that he requested

EVIDENCE - CIRCUMSTANTIAL EVIDENCE - EVALUATING INFERENCES - A four-factor consideration is used to evaluate inferences: (1) The temporal proximity of the possession to the crime to be inferred; (2) The number or percentage of the fruits of the crime possessed; (3) The nature of the possession in terms of whether there is an attempt at concealment or any other evidence of guilty knowledge; and (4) Whether an explanation is given and whether that explanation is plausible or demonstrably false

CRIMINAL PROCEDURE - SENTENCING - HABITUAL OFFENDER - When sentencing a habitual offender, previous offenses may be certified by a certified exhibit in order to prove the prior convictions

FACTS

Pastor Samuel Washington and his wife arrived at their church and noticed that a window was broken. Inside the church, Washington immediately saw that things were scattered across the floor and that someone had rifled through everything. Officer Seth Nelson and Investigator Joe Smith responded to the call and Washington reported that two items were missing. Before leaving, the officers took pictures of the scene. Later, Washington found a stack of school books and papers that did not belong to the church and relayed that information to the officers. While responding to a separate and seemingly unrelated call, Officer Brown made contact with Alphonso Ward and saw Ward carrying a pink and black backpack. While Brown was in pursuit, Sergeant Stanley Brewer witnessed Ward throw something into the bushes. After Ward was taken into custody, Brewer retrieved the pink and black backpack from the bushes. The backpack contained the two items stolen from the church. At trial, Chanda Burton testified that on the morning of the break-in, she noticed that her vehicle door had been left ajar and a backpack had gone missing from inside her vehicle. Ward testified that he did not steal the backpack or the items from the church, but that Edward Banks gave them to him. Banks did not testify and the jury found Ward guilty of two counts of burglary. At a subsequent hearing, the circuit court sentenced Ward as a nonviolent habitual offender to serve fourteen years for the burglary of the church and to serve a concurrent seven year term for the burglary of the vehicle. Ward appealed.

ISSUES

Whether (1) the trial court abused its discretion in giving a particular jury instruction; (2) there was sufficient evidence to support the convictions; (3) there was an unconstitutional habitual-offender sentence; and (4) there was an improper consideration of prior convictions.

HOLDING

(1) Because Ward created the jury instruction himself and did not object to the jury instruction at trial, the jury instruction was proper. (2) Because of the circumstantial evidence of Ward being close to the two crimes, being in possession of all of the known stolen items, attempting to hide the items when confronted by police, and failing to provide any evidence to support his story of how he received the stolen items, a jury could make a reasonable inference to establish circumstantial evidence. (3) Because the judge based Ward's sentencing on previous offenses, the court did not have to submit the increased sentencing to a jury and the habitual-offender sentence was not unconstitutional. (4) Because the State presented three exhibits that certified Ward's previous offenses, all with information declaring Ward received a year or more sentence for those offenses, the judge had adequate evidence to properly consider the prior convictions. Therefore, the Court of Appeals affirmed the judgment of the Bolivar County Circuit Court.

Affirmed - 2018-KA-01056-COA (Mar. 10, 2020)

Opinion by Judge Greenlee

Hon. Linda F. Coleman (Bolivar County Circuit Court, Second Judicial Dist.)

Mollie Marie McMillin (Pub. Def. Office) & *Pro se* for Appellant - Jeffery A. Klingfuss (Att'y Gen. Office) for Appellee

Briefed by [Daniel Bond](#)

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