

**MISSISSIPPI SUPREME COURT DECISIONS – SEPTEMBER 19, 2019*****SUPREME COURT - ORDERS*****NATIONWIDE MUT. INS. CO. V. STATE****COURT ORDER**

**CIVIL PROCEDURE - INTERLOCUTORY APPEAL - BRIEFING** - Due to their being prior precedent on this same issue, no further briefing is needed to render a decision

**CIVIL PROCEDURE - NOTICE OF COURT'S INTENT - ABUSE OF DISCRETION** - Due to the precedent and the petition being well taken, the trial court abused its discretion in appointing a special master

**ORDER**

Nationwide Mutual Insurance Company sought leave to appeal the order of the Circuit Court of the First Judicial District of Hinds County which denied entry of the parties' agreed scheduling order and gave notice of the trial court's intent to appoint a special master. Nationwide petitioned for an interlocutory appeal. Because the appointment of a special master in Homeowner Assistance Program cases pending before Judge Green in Hinds County has been addressed by the Supreme Court in two other cases, no further briefing was needed to vacate the circuit court's Notice of Court's Intent to appoint a special master. Therefore, the Supreme Court granted Nationwide's petition for interlocutory appeal and remanded the case to the Hinds County Circuit Court.

**OBJECTION**

Presiding Justice King argued that the appointment of a special master was not an abuse of discretion, and he would remand the case to the trial court to file a more specific order regarding the special master's duties.

**Granted & Remanded - 2019-IA-01017-SCT (Sept. 19, 2019)**

En Banc Order by Chief Justice Randolph - Objection by Presiding Justice King

Briefed by [Jack Byrd](#)

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***SUPREME COURT - CRIMINAL CASES*****IVORY V. STATE****CRIMINAL - FELONY**

**APPELLATE PROCEDURE - JUDGMENT NOTWITHSTANDING THE VERDICT - WEIGHT OF THE EVIDENCE** - A motion for judgment notwithstanding the verdict that challenges the weight of the evidence cannot be construed as a motion for a new trial and does not preserve the issue for appellate review

**APPELLATE PROCEDURE - MOTION FOR NEW TRIAL - WEIGHT OF THE EVIDENCE** - A contention that the verdict is against the weight of the evidence must be made in a motion for a new trial and the motion must comport with the Mississippi Rules of Criminal Procedure

**INEFFECTIVE ASSISTANCE OF COUNSEL - DEFICIENT PERFORMANCE - PREJUDICE** - Whether a defendant has received ineffective assistance of counsel is a question of law reviewed de novo under two prongs: first, the defendant must show that counsel's performance was deficient; second, the defendant must show that the deficient performance prejudiced the defense

### **FACTS**

After an armed robbery occurred outside a gas station in Amory, Mississippi, Deionta Ivory was questioned and arrested based upon the victims' physical description of the perpetrator's clothing and physique. Ivory was later positively identified in a line-up and indicted on counts of attempted armed robbery and kidnapping. Defense counsel argued that Ivory was mis-identified, as evidenced by his speech impediment and the inconclusive clothing evidence. A jury convicted Ivory on counts of armed robbery and kidnapping. During the sentencing hearing, the defense made a motion for judgment notwithstanding the verdict ("JNOV"), arguing that the jury's decision went against the weight of the evidence presented by the defense. Defense counsel did not make a motion for a new trial. The trial judge denied the JNOV motion based upon the evidence presented to the jury, and Ivory was given two consecutive sentences. On appeal, Ivory advanced the argument that the verdicts were contrary to the weight of the evidence and that defense counsel's JNOV motion should be construed as a motion for new trial or, in the alternative, that his trial attorney's failure to make a post-trial motion for a new trial constituted ineffective assistance of counsel. The Court of Appeals affirmed the judgment of the Monroe County Circuit Court. Ivory appealed.

### **ISSUES**

Whether (1) defense counsel's JNOV motion should be construed as a new trial motion because the motion challenged the weight of the evidence and (2) trial counsel's failure to make a new trial motion constituted ineffective assistance of counsel.

### **HOLDING**

(1) Because the defendant must raise the issue that the verdict was against the overwhelming weight of the evidence as a ground for his motion for new trial, and because Ivory's trial attorney failed to make a cognizable motion for a new trial, Ivory did not properly preserve a weight-of-the-evidence challenge by means of a JNOV motion for appeal. (2) Because Ivory could show that counsel's performance was deficient but could not show that the deficient performance prejudiced his defense, Ivory may not be granted a new trial due to ineffective assistance of counsel. Therefore, the Supreme Court affirmed the judgment of the Monroe County Circuit Court.

**Affirmed - 2018-KA-00981-SCT (Sept. 19, 2019)**

Opinion by Presiding Justice Kitchens

Hon. Paul S. Funderburk (Monroe County Circuit Court)

George T. Holmes (Pub. Def. Office) for Appellant - Alicia Ainsworth (Att'y Gen. Office) for Appellee

Briefed by [Melissa Fenwick](#)

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## **MISSISSIPPI COURT OF APPEALS DECISIONS – SEPTEMBER 17, 2019**

### ***COURT OF APPEALS - CIVIL CASES***

#### **HADLEY V. FEDEX GROUND PACKAGE SYS. INC.**

#### **CIVIL - PERSONAL INJURY**

**CIVIL PROCEDURE - SERVICE OF PROCESS - IMPROPER SERVICE BY MAIL** - Miss. R. Civ. P. 4 provides that in-state individuals may be served with process by first class mail; however, out of state individuals may be served via certified mail

**CIVIL PROCEDURE - LIMITATION OF ACTIONS - FILING COMPLAINT** - The filing of a complaint, even without service, of process tolls the three-year statute of limitations for a 120-day period

**CIVIL PROCEDURE - SERVICE OF PROCESS - 120 DAY RULE** - Miss. R. Civ. P. 4(h) requires a plaintiff to serve the summons and complaint on a defendant within 120 days of filing a complaint; otherwise the judge must dismiss the action without prejudice

### **FACTS**

Hadley was involved in an accident on January 31, 2014, with Stephen Otto, who was driving a vehicle owned by FedEx. Hadley filed a complaint in circuit court against FedEx and Otto on January 31, 2017, exactly one day before the statute of limitations expired. This tolled the statute of limitations for 120 days. Hadley attempted to serve FedEx on its Mississippi registered agent, CT Corporation System, via certified mail. After difficulty locating Otto, Hadley's attorney filed a motion for additional time to serve process, one week before the deadline to serve Otto would expire. Hadley also attempted to serve Otto by publishing notice in the *DeSoto Times Tribune* for three consecutive weeks beginning on June 20, 2017. FedEx and Otto filed motions to dismiss Hadley's complaint. Hadley requested another extension and leave to amend the complaint to add J. Delivery Services, an independent contractor for FedEx who was Otto's actual employer. Both motions were denied. Hadley appealed.

### **ISSUES**

Whether the trial court erred in (1) finding that Hadley improperly served FedEx with process; (2) dismissing Hadley's claims against Otto for failure to serve process; and (3) denying Hadley's motion to amend the complaint to add J. Delivery Services, Otto's actual employer.

### **HOLDING**

(1) Because FedEx would only have been properly served with process under the Mississippi Rules of Civil Procedure by delivery of the summons and complaint to an officer, managing agent, general agent, or any other agent authorized to receive process, and because Hadley admitted he only attempted to serve FedEx with process by certified mail on its registered agent in Mississippi, which was not allowed under the rules, the trial court did not err in finding that Hadley did not properly serve FedEx with process. (2) Because Hadley did not attempt to properly serve Otto with process by mail at any of his possible addresses, but only attempted to serve Otto by publication in the *DeSoto Times Tribune*, which was not allowed in a circuit court proceeding for money damages, the court did not err in dismissing Hadley's claims against Otto for failure to serve process. (3) Because Hadley failed to properly serve the original parties with process while the statute of limitations was tolled, rendering the original complaint time barred, the trial court did not err in denying Hadley's motion to amend his complaint. Therefore, the Court of Appeals affirmed the judgment of the DeSoto County Circuit Court.

**Affirmed - 2018-CA-00347-COA (Sept. 17, 2019)**

En Banc Opinion by Judge Tindell

Hon. James McClure III (DeSoto County Circuit Court)

Joe Morgan Wilson & Jerry Wesley Hisaw for Appellant - Robert A. Biggs III & Charles Stephen Stack Jr. for Appellees

Briefed by [David Boydston](#)

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## **JACKSON PUB. SCH. DIST. V. MASON**

### **CIVIL - OTHER**

**CIVIL PROCEDURE - JURISDICTION - TIMELY APPEAL** - Miss. R. App. P. 4(a) and Miss. R. Civ. P. 59 provide for filing a notice of appeal within thirty days after a motion to alter or amend the judgment is granted

**CIVIL PROCEDURE - APPELLATE - CHANCERY COURT**- A party may file a motion to alter or amend the judgment under Rule 59 in a case in which a circuit or chancery court is acting as an appellate court

**EDUCATION - EMPLOYMENT - TERMINATION** - Termination of a principal or teacher can occur at any time under Miss. Code Ann. § 37-9-59, and a demotion is considered a form of termination

## **FACTS**

Tanyatemeika Mason became principal of Jim Hill High School for the 2015-2016 school year after serving as assistant principal at the same institution. However, Jackson Public School District (“JPSD”) found she showed poor leadership and neglected her duties, adversely affecting the students and the school’s overall academic performance. On May 12, 2016, JPSD sent a letter to Mason offering her the position of assistant principal as an alternative to nonrenewal of her contract. Mason first accepted the offer but rescinded her acceptance the next day and rejected it. JPSD sent her another letter a couple weeks later stating that she had been demoted to assistant principal for the upcoming school year due to her poor leadership, professional judgment, and academic results. Under Miss. Code Ann. §37-9-59, Mason was entitled to a public hearing, which she requested in a timely manner. Before the hearing, JPSD gave Mason a notice detailing reasons for their action and referred to that action as both a “termination” and “demotion.” The hearing was held that summer. and the JPSD board of trustees voted to uphold Mason’s demotion/termination. Mason filed a notice of appeal with the chancery court, which ruled that her demotion was an untimely “non-renewal” of her contract and therefore void—reversing the board’s decision. Mason then filed a motion to amend the judgment to award her costs, which the court granted. JPSD appealed.

## **ISSUES**

Whether (1) the Court of Appeals lacked jurisdiction due to JPSD’s possible untimely appeal; (2) the Rules of Civil Procedure applied when a chancery court acted as an appellate court; (3) Mason’s demotion was an “untimely” and “void” non-renewal of her contract; and (4) the March 1 deadline for notice of non-renewal would be meaningless if the termination was upheld.

## **HOLDING**

(1) Because JPSD timely appealed under Miss. R. App. P. 4(a) and Miss. R. Civ. P. 59, which taken together allows filing a notice of appeal within thirty days after a motion to alter or amend the judgment is granted, the Court of Appeals had jurisdiction to hear the case. (2) Because the Court of Appeals recently ruled that a party may file a motion to alter or amend the judgment under Rule 59 in a case in which a circuit court is acting as an appellate court, the Rules of Civil Procedure did apply, and a timely motion to alter or amend the judgment tolls the time for taking an appeal in such a case, allowing for JPSD’s timely appeal. (3) Because demotion is a termination of the employee’s present employment with an offer of employment in a different position and termination of a principal or teacher can occur at any time under Miss. Code Ann. § 37-9-59, the employment action against Mason was valid and did not constitute a void non-renewal. (4) Because JPSD assumed a heightened burden of proving good cause for its decision to terminate by waiting after the deadline, upholding Mason’s termination did not render the deadline meaningless. Therefore, the Court of Appeals reversed the judgment of the Hinds County Chancery Court.

## **CONCURRENCE IN PART/DISSENT IN PART**

Judge McDonald agreed that appeal to this court was timely and that this court had jurisdiction. However, she argued that the chancery court appropriately recognized this case as a costly mistake by JPSD in failing to adhere to the deadline and attempting to have Mason waive her right to timely notice of non-renewal. She would have affirmed the chancery court’s ruling, which identified Mason’s demotion as an unlawful and untimely non-renewal of her contract.

### **Reversed & Rendered - 2018-SA-00094-COA (Sept. 17, 2019)**

En Banc Opinion by Presiding Judge J. Wilson - Concurrence in Part/Dissent in Part by Judge McDonald

Hon. Denise Owens (Hinds County Chancery Court, First Judicial Dist.)

Joanne N. Shepherd, Dorian E. Turner, & Dellwyn K. Smith for Appellant - Preston Davis Rideout Jr. for Appellee

Briefed by [Kaitlin Bethay](#)

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## CIVIL - WRONGFUL DEATH

**EVIDENCE - ADMISSABILITY - EXPERT TESTIMONY** - Miss. R. Evid. 702 provides a witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if: (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (b) the testimony is based on sufficient facts or data; (c) the testimony is the product of reliable principles and methods; and (d) the expert has reliably applied the principles and methods to the facts of the case

**CIVIL PROCEDURE - SUMMARY JUDGMENT - PRODUCTS LIABILITY** - In order to survive summary judgment in a products-liability claim, the nonmovant needs to show that the product was: (1) designed in a defective manner; (2) which rendered the product unreasonably dangerous to the plaintiff; (3) that the defective and unreasonably dangerous condition proximately caused the plaintiff's damages; (4) that the damages were not caused by an inherent characteristic of the product which cannot be eliminated without substantially compromising the product's usefulness or desirability and which an ordinary person would recognize; (5) that the defendant knew or should have known of the danger that caused the damage; and (6) that there existed a feasible design alternative that would have, to a reasonable probability, prevented the harm without also impairing the product's utility, usefulness, practicality or desirability

**TORTS - PRODUCTS LIABILITY - EVIDENCE** - In products-liability claims, plaintiffs bear the burden of proof on the issue of causation and must introduce evidence which affords a reasonable basis for the conclusion that it is more likely than not that the conduct of the defendant was a cause in fact of the result

### FACTS

William Logan and his wife, Charlie Patsy Logan, purchased a Lincoln Town Car from Kirk Auto Company ("Kirk"). Shortly thereafter, Logan brought the car back to Kirk for an inspection because Ford Motor Company ("Ford") issued a recall notice on the model's steering sector. Upon inspection, Kirk did not detect an issue. Following the inspection, Charlie, while driving the vehicle, veered off the road and died as a result. Logan sued Ford, Lincoln Motor, and Kirk under the Mississippi Products Liability Act ("MPLA"). Logan tendered Derrick Rainey as an expert witness in the field of Automotive Engineering Analysis and Technology to support his assertion that Charlie's accident occurred because the car's steering column was defectively designed. The claims against Lincoln Motor were dismissed with prejudice, and Ford and Kirk filed a motion to exclude Rainey's testimony and a motion for summary judgment. The Grenada County Circuit Court granted both motions, finding Rainey was not qualified as an expert and that no genuine issue of material fact existed. Logan appealed.

### ISSUES

Whether (1) the trial court erred in determining that Rainey was not qualified as an expert and (2) summary judgment was improper.

### HOLDING

(1) Because Rainey had only limited training, and because his training was not in the designing or engineering of steering columns, the trial court did not err in concluding that Rainey was not qualified to testify as an expert witness. (2) Because Logan failed to introduce any evidence that afforded a reasonable basis for causation, summary judgment was proper. Therefore, the Court of Appeals affirmed the judgment of the Grenada County Circuit Court.

### CONCURRENCE IN PART/DISSENT IN PART

Judge Westbrook agreed with the majority's conclusion that Rainey could not testify as an engineer. She argued, however, that even as a mechanic, Rainey could have aided the jury on the circumstances surrounding the accident and death of Charlie.

### DISSENT

Judge McCarty argued that because Rainey had the knowledge, skill, experience, training, and education to be admitted as an expert, and even had hands-on experience with the vehicle in question, he should have been permitted to testify as an expert under Miss. R. Evid. 702. He further argued that because Rainey's testimony should not have been excluded, summary judgment was improper.

**Affirmed - 2017-CA-01275-COA (Sept. 17, 2019)**

En Banc Opinion by Judge Greenlee - Concurrence in Part/Dissent in Part by Judge Westbrook - Dissent by Judge McCarty  
Hon. George M. Mitchell Jr. (Grenada County Circuit Court)  
Edward Blackmon, Marcus Amir Williams, & Bradford Jerome Blackmon for Appellant - D. Sterling Kidd, Bradley Witherspoon  
Smith, & George Clanton Gunn IV for Appellees  
Briefed by [Nicole Broussard](#)

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## RICHARDSON V. PUB. EMPs.' RET. SYS.

### CIVIL - STATE BOARDS & AGENCIES

**ADMINISTRATIVE LAW - DISABILITY - EVIDENCE** - In order to approve a claim for disability benefits, PERS must find that the disability occurred within six months of termination and was the direct cause of withdrawal from state service

**ADMINISTRATIVE LAW - AGENCY DISCRETION - EVIDENCE** - Miss. Code Ann. § 25-11-120(1) confers upon PERS the authority to defer a decision in order to request additional existing medical records not previously furnished by the claimant; however, this authority does not require PERS to defer a case to obtain or review every possible record

#### FACTS

Kari Wynn Phillips worked as a Family Protection Specialist-Advanced at the Mississippi Department of Human Services (“DHS”) for nearly 24 years. In March of 2008, Phillips was suspended and placed on leave after being accused of stealing narcotics and other medications from her clients and their families. Subsequently, Phillips was terminated. In February of 2009, Phillips applied for non-duty-related disability benefits pursuant to Miss. Code Ann. § 25-11-113(1)(a), alleging disability due to depression, anxiety, nerves, attention deficit/hyperactivity disorder (“ADHD”), and migraines. After the Public Employees’ Retirement System (“PERS”) Medical Board (“the Board”) denied her claim, Phillips appealed to the PERS Board of Trustees, which granted a hearing before the PERS Disability Appeals Committee. The Committee found that Phillips’s termination for cause and her recognition of the reason for her termination as misconduct on various forms established that she was terminated for reasons other than a medical or psychiatric condition. On recommendation from the Appeals Committee, the Board denied Phillips’s claim. Phillips subsequently appealed the Board’s determination, which the circuit court affirmed. Phillips died in May of 2016, and Sally Richardson, Phillips’s mother and named beneficiary, appealed on behalf of her daughter.

#### ISSUES

Whether (1) the Board’s decision to deny Phillips’s disability benefits was not supported by substantial evidence and, therefore was arbitrary and capricious and (2) the Board violated Phillips’s due process rights to a fair hearing by not obtaining additional medical records.

#### HOLDING

(1) Because the record established that Phillips’s alleged disability was not the direct cause of her termination, the Board’s decision to deny Phillips’s disability benefits was supported by substantial evidence. (2) Because the Board found the evidence before it sufficient to make an informed and knowledgeable decision based on the records already presented by Phillips, along with her testimony and that of her family, Phillips’s due process rights were not violated. Therefore, Court of Appeals affirmed the judgment of the Hinds County Circuit Court.

**Affirmed - 2018-SA-01062-COA (Sept. 17, 2019)**

Opinion by Judge C. Wilson  
Hon. Jeff Weill, Sr. (Hinds County Circuit Court, First Judicial Dist.)  
George S. Luter for Appellant - Samuel Martin Millette for Appellee  
Briefed by [Harrison Smith](#)

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## STATE BD. OF NURSING V. HOBSON

### CIVIL - STATE BOARDS & AGENCIES

**ADMINISTRATIVE LAW - STATE BOARDS & AGENCIES - SUBSTANTIAL EVIDENCE** - Pursuant to Miss. Code Ann. § 73-15-31, allegations unsupported by the record or a potential motive are not enough to negate an appellate court's finding of substantial evidence

**ADMINISTRATIVE LAW - STATE BOARDS & AGENCIES - ARBITRARY AND CAPRICIOUS** - When a board or agency's decision is supported by substantial evidence, it is not arbitrary or capricious

**ADMINISTRATIVE LAW - STATE BOARDS & AGENCIES - APPELLATE REVIEW** - The proper standard of appellate review for a state board's decision is whether there is substantial evidence to support the board's decision

### FACTS

Ann Hobson was a Certified Registered Nurse Anesthetist ("CRNA") at the Indianola, Mississippi, South Sunflower County Hospital ("the Hospital"). As a CRNA, Hobson's primary job was to administer anesthesia to patients. Hobson was the primary CRNA assigned to the Hospital's Operating Room Number 2 ("OR 2"), and she had a set of keys to the room's lock box containing narcotics, including Demerol, used to sedate patients. The Hospital kept OR 2's lock box keys in an attached hidden compartment, and Hobson regularly locked the box and returned the keys after each procedure. After one of her procedures, Hobson claimed she administered Demerol to the patient, signed the narcotics log to verify the remaining Demerol count in the lock box, and left the hospital. However, scrub technicians later discovered that OR 2's lock box had been left open and six vials of Demerol were missing. Hobson was asked to return to the Hospital and everyone with direct access to OR 2 was subjected to drug testing for Demerol. These samples were collected on site and each person tested, including Hobson, signed a chain of custody form acknowledging that the samples were sealed with tamper-proof seals in their presence. Hobson tested positive for Demerol, and she was ultimately terminated from the Hospital. The Mississippi State Board of Nursing ("the Board") brought three charges against Hobson pursuant to Miss. Code Ann. § 73-15-31, based on her positive test result and the missing Demerol. The Board's Hearing Panel ("the Panel") dismissed the first two charges but found her guilty of the third charge for "possessing, obtaining, furnishing, or administering drugs to any person, including [her]self, except as legally directed." As a result, the Panel suspended Hobson's license for six months. Hobson appealed to the full Board, which upheld the Panel's decision. Hobson subsequently appealed the Board's decision to the Chancery Court of Grenada County, and the Board's decision was reversed. The Board appealed.

### ISSUES

Whether the chancery court erred in (1) not finding that the Board's decision was supported by substantial evidence; (2) not determining whether the Board's decision was arbitrary and capricious; and (3) reversing the Board's decision.

### HOLDING

(1) Because Hobson's allegations that she was set up were unsupported by the record or a potential motive, her positive drug test result provided substantial evidence that she converted the missing Demerol for her own use. (2) Because there was substantial evidence to support the Board's decision, the decision was not arbitrary and capricious. (3) Because the chancery court based its decision on unproven concerns rather than whether there was substantial evidence to support the Board's finding, the chancery court erred in reversing the Board's decision. Therefore, the Court of Appeals reversed the judgment of the Grenada County Chancery Court.

### Reversed & Rendered - 2018-SA-00373-COA (Sept. 17, 2019)

Opinion by Judge Westbrook

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

Brett Bagley Thompson for Appellant - J. Lawson Hester for Appellee

Briefed by [Anna McLemore](#)

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

### **GORDON V. STATE**

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

**CRIMINAL PROCEDURE - GUILTY PLEA - COMPETENCY** - For an accused to be competent to enter a guilty plea, he must have a rational understanding of the charges against him and the ability to assist his lawyer in preparing a defense

**CRIMINAL PROCEDURE - COMPETENCY - BURDEN OF PROOF** - An accused is presumed competent to voluntarily enter a guilty plea and has the burden to prove by substantial evidence that he is not competent to do so

**CIVIL PROCEDURE - APPEALS - INEFFECTIVE COUNSEL** - To prove ineffective assistance of counsel, an accused must prove that his counsel's performance was deficient, and that his counsel's deficiency prejudiced his defense

#### **FACTS**

Tysheka Gordon was arrested for aggravated domestic violence after shooting her boyfriend in the back of the head. Gordon then attacked a correctional officer in the Jones County jail and was charged with aggravated assault of a law enforcement officer. The trial court conducted a competency hearing and discussed the findings of medical and psychiatric examinations, after which Gordon testified that she desired to enter a guilty plea on both charges and that she was satisfied with public defender John A. Piazza's representation. After she was sentenced, she filed a motion for post-conviction relief ("PCR"). The trial court denied the motion because Gordon failed to provide evidence to support her allegations of ineffective counsel and lack of competency. She filed a motion for reconsideration of her PCR motion, which the court also denied. Gordon appealed.

#### **ISSUES**

Whether Gordon's convictions should be overturned due to (1) lack of competency to enter a voluntary guilty plea and (2) ineffective assistance of counsel.

#### **HOLDING**

(1) Because Gordon failed to present evidence showing that she was not competent to voluntarily plead guilty, she was presumed competent. (2) Because Gordon only offered her own conclusory assertions and failed to prove that her attorney's ineffective performance caused her to enter a guilty plea, her ineffective counsel claim was without merit. Therefore, the Court of Appeals affirmed the judgment of the Jones County Circuit Court.

**Affirmed - 2018-CP-00096-COA (Sept. 17, 2019)**

Opinion by Judge C. Wilson

Hon. Dal Williamson (Jones County Circuit Court, Second Judicial Dist.)

*Pro se* for Appellant - Lauren H. Tedder (Att'y Gen. Office) for Appellee

Briefed by [Luke Seymour](#)

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### **PICKLE V. STATE**

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



**CRIMINAL LAW - UNIFORM POST-CONVICTION COLLATERAL RELIEF ACT - PROCEDURAL BARS** - Under the UPCCRA, any order denying or dismissing a PCR motion is a bar to a second or successive PCR motion

**CRIMINAL LAW - POST-CONVICTION RELIEF - TIME FOR PROCEEDINGS** - A PCR motion is time-barred when the motion is not filed within three years after time for taking appeal from judgment of conviction or sentence has expired

**CRIMINAL LAW - POST-CONVICTION RELIEF - PROCEDURAL BARS** - Errors affecting fundamental rights may be exempted from procedural bars, but there must at least appear to be some basis for the truth of the claim and not mere assertions

## **FACTS**

In 1978, C.F. Pickle Jr. was convicted for the rape and murder of Mary Elizabeth Harthcock and sentenced to life in the custody of the Mississippi Department of Corrections. Pickle filed multiple post-conviction relief (“PCR”) motions, which the circuit courts dismissed. On March 12, 2018, Pickle filed another PCR motion claiming his constitutional rights to due process and equal protection were violated at sentencing. Specifically, he claimed that the Leflore County Circuit Court should have considered alternative sentencing under the Youth Court Act and that his counsel was ineffective for failing to request such alternative sentencing. The Leflore County Circuit Court dismissed Pickle’s motion as procedurally barred without an evidentiary hearing. Pickle appealed.

## **ISSUE**

Whether the court erred in dismissing Pickle’s motion for PCR as procedurally barred.

## **HOLDING**

Because Pickle’s PCR motion was not his first and was filed approximately thirty years after the time for taking an appeal expired, the motion was procedurally barred. Additionally, because Pickle provided no support for his claims and failed to demonstrate that the trial judge did not consider alternative sentencing, his claim was not excepted from the procedural bars. Therefore, the Court of Appeals affirmed the judgment of the Leflore County Circuit Court.

**Affirmed - 2018-CP-00774-COA (Sept. 17, 2019)**

Opinion by Judge Greenlee

Hon. Richard A. Smith (Leflore County Circuit Court)

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

Briefed by [Haley Nutt](#)

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

### **PETERS V. STATE**

#### **CRIMINAL - FELONY**

**CRIMINAL PROCEDURE - CHALLENGES - WEIGHT OF THE EVIDENCE** - When reviewing a challenge to the weight of the evidence, the Court will only disturb a verdict when it is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice; the evidence must be viewed in the light most favorable to the verdict, and the Court must affirm unless the trial court abused its discretion in denying a new trial

**CRIMINAL PROCEDURE - CORROBORATION - ACCOMPLICE TESTIMONY** - Even uncorroborated accomplice testimony may be sufficient to convict a defendant; this rule is inapplicable in those cases where the testimony is unreasonable, self-contradictory or substantially impeached

## FACTS

Donnifer Peters and his girlfriend, Ashley Harvey Alford (“Harvey”), drove to Alonza Mays’s trailer. Based on Harvey’s testimony, after buying alcohol and cigarettes, all three individuals drove to see Daniel Holmes (“DJ”). Upon arriving at DJ’s farm, Harvey retrieved guns from DJ’s truck and gave them to Peters so that he could sell them for drugs. After, they drove to Lionel Holmes’s house. Upon arrival, Peters and Mays exited the vehicle. When both men returned to the car, there was tension between them. Harvey testified that Peters stopped the car to urinate, walked around the vehicle, and shot Mays. After driving a short distance, Peters stopped again and told Harvey to remove Mays from the car. The pair started driving again, but due to running out of gas, Peters and Harvey walked until they were picked up. Days later, Harvey was arrested, and her vehicle was seized. Ultimately, the matching ballistics, the blood match, and the testimony from various witnesses all corroborated that Peters was with Mays the last day he was seen. After considering all the evidence presented at trial, the jury found Peters guilty as charged. Peters appealed.

## ISSUE

Whether the verdict was against the overwhelming weight of the evidence.

## HOLDING

Because Peters’s former cellmate testified that Peters confessed to the crime, and because Harvey’s testimony was corroborated by other witnesses in addition to Mays’s blood being found in the backseat of Peters’s and Harvey’s vehicle, the court did not find the verdict to be so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice. Therefore, the Court of Appeals affirmed the judgment of the Walthall County Circuit Court.

### **Affirmed - 2018-KA-00671-COA (Sept. 17, 2019)**

Opinion by Judge Greenlee

Hon. David H. Strong Jr. (Walthall County Circuit Court)

Erin Elizabeth Briggs (Pub. Def. Office) for Appellant - Barbara Wakeland Byrd (Att’y Gen. Office) for Appellee

Briefed by [Brittany Brewer](#)

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## BUTLER V. STATE

### CRIMINAL - FELONY

**CRIMINAL PROCEDURE - CONFIDENTIAL INFORMANTS - DISCLOSURE OF IDENTITY** - Neither nondisclosure of a confidential informant’s identity, who was not depicted as an eyewitness and only provided data to establish probable cause supporting a search warrant, nor the arresting officer’s subsequent summary of such statement at trial infringe the constitutional rights of the accused to confront the witnesses against them

**CRIMINAL PROCEDURE - DEFENSE WITNESSES - PROPER LIMITATION OF TESTIMONY** - Testimony regarding events in the home after the initial search and removal of drugs from a defendant’s home is irrelevant, and the danger of unfair prejudice to the State from testimony regarding the use of a racial slur by officers on the scene substantially outweighs any alleged probative value

**CRIMINAL PROCEDURE - PRIOR CONVICTIONS RECORDS - RIGHT TO CONFRONT WITNESSES** - Self authenticating records of a defendant’s prior convictions are not testimonial evidence, and they do not trigger a defendant’s constitutional right to confront witnesses

**CRIMINAL PROCEDURE - DISTRICT ATTORNEY PRO TEMPORE - ATTORNEY GENERAL** - The Attorney General may serve as a district attorney pro tempore in three situations: the district attorney is absent, the district attorney is unable to perform his or her duties, or the district attorney is disqualified

## FACTS

Agent Kevin Dear received a call from a confidential informant who provided Christopher Butler's name and address and stated that Butler was selling drugs from his home. The informant further stated he had seen drugs in Butler's home within twenty-four hours. With this information, Agent Dear obtained a search warrant and subsequently searched Butler's home that same day. During the search, Agent Dear and his team found four gallon-size Ziploc bags of marijuana. Prior to trial, the Attorney General moved to disqualify the Hinds County District Attorney, Robert Smith Schuler, from all matters dealing with Butler. District Attorney Smith agreed and formally recused himself. After, Butler filed a motion for the circuit judge's recusal due to "contentions" between the judge and District Attorney Smith. The circuit judge denied the motion. Also prior to trial, the Attorney General moved to exclude testimony from Butler's witness Josh Ledford, who had arrived at Butler's home while agents were still conducting their search. Ledford proffered testimony that he observed a canine in Butler's home that, during the search, did not seem to alert to the presence of drugs in any way. Ledford also provided testimony that he overheard some of the agents use a racial slur in reference to Butler. The circuit court found Ledford's testimony regarding the dog irrelevant, as there was no evidence he was aware of how drug sniffing dogs indicated the presence of drugs. Further, the circuit court conducted a balancing test under Miss. R. Evid. 403, finding Ledford's testimony regarding the racial slur gave rise to a prejudice to the State that substantially outweighed any alleged probative value. At trial, Agent Dear was allowed to testify about the confidential informant's statement which resulted in the search warrant. Ledford was only allowed to testify that he never smelled any suspicious odors while inside Butler's home. After considering the evidence and allowed testimony, the jury found Butler guilty of possession of more than one but less than five kilograms of marijuana. Butler was sentenced as both a habitual offender and a subsequent drug offender to thirty years in MDOC's custody and fined \$500,000. Butler filed an unsuccessful JNOV motion after trial. Butler appealed.

## **ISSUES**

Whether (1) the admission into evidence of a confidential informant's statement to the arresting officer violated Butler's right to confront the witnesses against him; (2) the circuit court erroneously limited the testimony of Butler's witness; (3) the introduction of certified copies of Butler's prior convictions violated his right to confrontation; (4) the circuit court erroneously appointed the the Attorney General as special prosecutor; (5) the circuit court erred by denying Butler's recusal motion; and (6) Butler's attorney rendered ineffective assistance.

## **HOLDING**

(1) Because the confidential informant merely provided data that established probable cause to support a search warrant and was not depicted as an eyewitness to Butler's alleged criminal activity, the informant's minimal connection with the crime did not justify the disclosure of their identity. Likewise, the informant's tip is admissible to the extent required to show why an officer acted as he did at a particular place and time. (2) Because the drugs had already been removed from Butler's home when Ledford entered, and because Ledford had no knowledge of drug-sniffing dogs, his testimony about the drug dog was irrelevant. Similarly, his testimony regarding the use of a racial slur by officers on the scene carried a danger of prejudice against the State which substantially outweighed any alleged probative value. (3) Because self-authenticating records of prior convictions are not testimonial evidence, they do not trigger a defendant's constitutional right to confront witnesses. (4) Because the district attorney was disqualified and voluntarily recused himself, the Attorney General may serve as district attorney pro tempore. (5) Because Butler's recusal motion only presented mere speculation of prejudice, there was insufficient evidence to overcome the presumption of impartiality. (6) Because Butler only alleged ineffective assistance of counsel to preserve his claim for post-conviction proceedings, it was dismissed without prejudice. Thus, the Court of Appeals affirmed the judgment of the Hinds County Circuit Court.

### **Affirmed - 2017-KA-01151-COA (Sept. 17, 2019)**

Opinion by Judge Tindell

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

George T. Holmes & Justin Taylor Cook (Pub. Def. Office) for Appellant - Alicia Marie Ainsworth & Katy Gerber (Att'y Gen Office) for Appellee

Briefed by [Charles Ellzey](#)

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