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Supreme Court – Civil

Kansler v. Miss. Dep't of Revenue - Tax – Statute of Limitations – Commerce Clause – In May 2007, Michael and Vickie Kansler moved from New York to Mississippi. The Kanslers filed their Mississippi tax returns for the 2008 and 2009 tax years. Stock options were included in their taxable income. In 2012, New York audited the Kanslers' taxes related to the exercise of stock options in 2008, 2009, and 2010. After completing the audit in 2014, New York assessed the Kanslers additional tax and interest. The Kanslers paid these additional taxes almost immediately after the notice. On January 2015, the Kanslers filed amended Mississippi tax returns and requested a refund of \$257,140 based on the credit allowed for income taxes paid to other states. The Mississippi Department of Revenue denied the refund because the request was barred by the three-year statute of limitations. The Department's Board of Review and the Mississippi Board of Tax Appeals affirmed the Department's decision. On appeal, the Kanslers argued that the statute of limitations violated the Dormant Commerce and Due Process Clause of the United States Constitution. The chancery court denied the Kanslers' motion for summary judgment and granted the Department's motion. The Supreme Court entertained only the Commerce Clause and Due Process Clause arguments.

Because the harm alleged was incidental to Mississippi's otherwise nondiscriminatory statute of limitations under the discrimination test in *Pike*, the statute of limitations does not give punitive local benefits. Further, because the statute of limitations does not deny the Kanslers' eligibility for the tax credit, the statute of limitations did not violate the Kanslers' Due Process rights, nor did Mississippi obtain the taxes illegally. Therefore, the Supreme Court affirmed the judgment of the Hinds County Circuit Court.

Briefed by [Drey Russell](#)

Ogletree v. The Mississippi Bar - Mississippi Bar – Disciplinary Rules – Reinstatement – In 2015, the Mississippi Bar formally suspended Robert Bryan Ogletree for six months. Upon meeting the necessary requirements and with the recommendation of the Mississippi Bar, Ogletree filed for reinstatement. In his filing, he admitted wrongdoing and had paid restitution. Ogletree demonstrated that he had rehabilitated his conduct through participation in the Lawyers and Judges Assistance Program and meetings with a psychiatrist. Ogletree was also required to notify all of his clients with active matters pending that had been suspended from practice upon the Court's 2015 order. Although he did not file the necessary affidavits until 2017, he did not have any clients at the time of his suspension, nor was he involved in any matters in Mississippi. Ogletree, with support from the Bar, contended that the delayed filing of affidavits should not prevent the successful petition for reinstatement. Therefore, the Supreme Court reinstated Ogletree.

Briefed by [David Wellen](#)

Trigg v. Farese - Legal Malpractice – Professional Negligence – Accounting for Money Paid – On September 10, 2011, after drinking alcohol, Dalton Trigg drove his vehicle and collided with another vehicle. A fourteen-

year-old passenger in the other vehicle suffered injuries to her lower extremities and a laceration to her eyebrow. When Dalton's father, Dr. Trigg, learned that Dalton had been drinking before the accident, he approached Steven Farese, Sr. to discuss legal representation for his son. Farese demanded an up-front retainer of \$50,000. Farese warranted that Dalton would incur only a misdemeanor charge and would not be sentenced to any jail time. Dr. Trigg paid the retainer in reliance of this guarantee. However, Dalton was eventually indicted for aggravated DUI. Farese then allegedly advised Dalton to plead guilty to the felony charge, and it would somehow be reduced to a misdemeanor and he would not receive any jail time. However, his plea led him to nine months of incarceration. Unsatisfied with Farese's representation, Dalton and Dr. Trigg filed suit against Farese and his firm on April 1, 2014. The Triggs alleged a variety of claims, all of which stemmed from Farese's representation to Dalton. Specifically, the Triggs styled their causes of action under fraud, breach of contract, legal malpractice (negligence), accounting for money paid, and negligent infliction of emotional distress. The trial court held that the claims were premature because Dalton had not yet secured postconviction relief from the underlying conviction, and it dismissed the complaint with prejudice. The Triggs appealed.

Because a convict must first "exonerate" himself by obtaining relief from his conviction or sentence before he may pursue a claim against his defense attorney for professional negligence in causing his conviction, Dalton's claim of professional negligence was improper. However, because the claim for an accounting of the retainer paid to Dalton's attorney was a fee dispute over earned monies, the claim should not have been dismissed. Further, because the Triggs claimed that the payment of the retainer entitled them to an accounting of the funds and a refund of the unearned position, the Triggs had standing to pursue the accounting claim. Therefore, the Supreme Court affirmed in part and reversed and remanded in part the ruling of the Lafayette County Circuit Court.

Briefed by [Whitney Jackson](#)

**Whether a convict must first exonerate himself by obtaining relief from his conviction or sentence before he may pursue a claim for professional malpractice is an issue of first impression in Mississippi.*

Supreme Court – Orders

Davis v. State - Successive Writ – Procedural Bar – Monetary Sanctions – In 2004, the convictions and sentences for Eric Shawn Davis were affirmed on direct appeal. Davis filed an application for leave to proceed in the trial court, but the application was denied in 2005. Davis filed a second application for leave to proceed in the trial court.

Because Davis's application was barred by time and was a successive application, and the application failed to meet any of the exceptions, the Supreme Court ordered that the application was denied. Further, there was no merit to Davis's claim challenging the habitual offender portion of his indictment. Finally, because the filing was frivolous, Davis was warned that future filings could result in monetary sanctions and restrictions on filing applications for post-conviction collateral relief *in forma pauperis*.

Justice King objected in part, disagreeing with the determination that Davis's application was frivolous and disagreeing with the warning that future frivolous filings could result in monetary sanctions or restrictions for post-conviction collateral relief *in forma pauperis*. Justice King argued that Davis made reasonable arguments regarding the habitual offender portion of his indictment and that the Supreme Court should not discourage defendants from exercising their right to appeal by warning of future sanctions and restrictions.

Briefed by [Ryan Overturf](#)

Jackson v. State - Successive Writ – Procedural Bar – Frivolous Filing – Randy Dale Jackson filed a *pro se* "Application for Leave to Proceed in the Trial Court and a Motion to Amend Post-Conviction." The Supreme Court affirmed Jackson's conviction for murder and sentence of life imprisonment on May 3, 2001. The application before the Court was Jackson's fourth application for leave to file a motion for post-conviction relief. The Supreme Court ordered that Jackson's application for leave was time-barred and did not meet any of the exceptions to the time-bar. Notwithstanding the time-bar, the Supreme Court ordered that Jackson's

filing of a fourth application was frivolous, and Jackson was warned that future filings deemed frivolous may result in additional monetary sanctions and restrictions on filing applications for post-conviction relief (or pleadings in that nature) *in forma pauperis*.

Justice King objected to the order in part, disagreeing with the Court's finding that the application was frivolous because it was out of line with the Court's previous definition of a frivolous motion. He also disagreed with the warning that future filings deemed frivolous may result in monetary sanctions or restrictions on filing for post-conviction collateral relief *in forma pauperis*, as it would only serve to punish or preclude defendants from their lawful right to appeal.

Briefed by [Katie Humphries](#)

[Jackson v. State](#) - Successive Writ – Frivolous Filing – Monetary Sanctions – David Jackson was convicted of possession of cocaine with the intent to distribute and sentenced to thirty years as a habitual offender. Since then, Jackson filed fourteen motions for post-conviction relief. He has received two monetary sanctions, still outstanding, for his frivolous motions. Jackson filed an application for leave to proceed in the trial court. Because the application for leave was time-barred and a successive motion, did not meet any exception to the bars, and the claims raised in the application were without merit, the Supreme Court dismissed the application for leave. Further, because the application for leave was frivolous, the Supreme Court warned Jackson that future filings deemed frivolous may result in additional monetary sanctions and restrictions on filing applications for post-conviction collateral relief *in forma pauperis*. Jackson also filed a motion to proceed as a sanctioned litigant which, the Supreme Court dismissed as moot the motion to proceed.

Justice King objected to the finding that Jackson's application was frivolous and to the warning that future filings deemed frivolous may result in monetary sanctions or restrictions on filing applications for post-conviction collateral relief *in forma pauperis*. King argued that Jackson made reasonable arguments and thus his application was not frivolous. King also argued that instead of imposing monetary sanctions, the Supreme Court should simply deny or dismiss motions which lack merit, and that cutting off the right to proceed *in forma pauperis* is to cut off access to the courts, thereby violating a defendant's constitutional rights.

Briefed by [Luke Phillips](#)

[Jones v. State](#) - Writ of Certiorari – *Montgomery* – *Miller* Factors – Brett Jones was convicted of the murder of his grandfather at fifteen. The Lee County Circuit Court imposed a mandatory sentence of life imprisonment without possibility for parole. Jones was resentenced using the *Miller* factors, and the trial court found Jones ineligible for parole. The Court of Appeals confirmed Jones's conviction and sentence. In an en banc order of the Court's own motion, the Court found no need for review of Jones's writ of certiorari on petition and dismissed the order under Miss. R. App. P. 17(f).

Presiding Justice Kitchens objected to the order, arguing that the Court of Appeals erred in failing to consider *Montgomery*, which held that *Miller* only bars life without parole for the rarest of juvenile offenders whose crimes reflect permanent incorrigibility. Because the record did not reflect Jones's permanent incorrigibility, Justice Kitchens argued the ruling was an abuse of discretion and would vacate and remand for resentencing to life imprisonment with eligibility for parole.

Briefed by [Katelin Davis](#)

[Rice v. State](#) - Successive Motion – Leave to Proceed – Outstanding Fees – This en banc order by the Supreme Court denied David Lee Rice's motion to rescind a previous court order which restricted Rice from filing motions until he paid his outstanding docket fees. The Supreme Court also dismissed Rice's motion for post-conviction relief and his application for leave to proceed.

Justice King objected, arguing that the Supreme Court's imposition of monetary fees on indigent defendants improperly punished indigent defendants and violated Mississippi's constitutional guarantee that all citizens will have access to the courts.

Briefed by [Davis Pigg](#)

Winding v. State - Successive Writ – Frivolous Motions – Sanctions – James C. Winding was sanctioned by the Supreme Court in the amount of \$100 on December 12, 2013, for having filed a frivolous application for leave despite a warning against doing so. Winding's conviction and sentence were affirmed by the Court of Appeals, and the mandate issued on August 23, 2005. On at least four prior occasions, Winding has sought leave of the Supreme Court to file petitions for post-conviction relief in the trial court, and all of those applications have been rejected. Winding filed a *pro se* motion to set aside the \$100 sanction levied against him in 2013. Additionally, Winding applied for leave to proceed in the trial court, along with several additional findings, which the Court made a part of the application for leave.

The Supreme Court ordered, en banc, that the current application for leave was (1) both time-barred and successive; (2) did not meet any of the exceptions to the procedural bars; and (3) was frivolous. The Supreme Court additionally warned Winding that future filings deemed frivolous may result not only in additional monetary sanctions, but also restrictions on filing applications for post-conviction collateral relief (or pleadings in that nature) *in forma pauperis*. Therefore, the Supreme Court ordered that the motion to set aside the previously ordered sanction in the amount of \$100 was denied, and the application for leave, and subsequently filed amendments/attachments thereto, were dismissed as procedurally barred.

Justice King objected to the order in part with a separate written statement joined by Presiding Justice Kitchens, arguing that Winding made reasonable arguments in his motion for post-conviction relief and that he disagreed with the determination that Winding's application was frivolous.

Briefed by [Natalie McCarty](#)

Supreme Court – Criminal

King v. State - Psychological Examination – Prior Bad Acts – Habitual Offender – Brian King, along with another man, attempted to rob Carlos Malone, who subsequently called the police. Malone later identified a gun recovered by the police from King's apartment as the gun used by King in the attempted robbery. In the Jones County Circuit Court, King was indicted as a habitual offender, convicted of felon in possession of a firearm, and sentenced to ten years without the possibility of parole. King appealed his conviction on the grounds that the trial court had improperly denied his request for a psychological examination for competency and had improperly allowed the introduction of evidence of prior bad acts.

Because trial courts are afforded broad discretion in ordering a psychological examination, because parties are presumed competent unless demonstrated to be otherwise, and because, after questioning King, the trial court found no reasonable grounds to support that King was mentally incompetent, the trial court did not err in denying King a psychological evaluation to determine competency. Because proof of another crime is admissible where the offense charged and that offered to be proved are so interrelated as to constitute a single transaction or occurrence or a closely related series of transactions or occurrences, and because King's act of possessing the weapon during the attempted robbery and his mere possession of the weapon constituted a single transaction, the trial court did not improperly allow the introduction of evidence of prior bad acts. Therefore, the Supreme Court affirmed the judgment of the Jones County Circuit Court.

Briefed by [Jon-Paul Bushnell](#)

Court of Appeals – Civil

Herder v. Madison Cty. Bd. of Supervisors - Real Property – Zoning Regulations – Rezoning – In 2006, the owner of twenty-three acres in Madison County filed a petition to rezone and reclassify the subject property. The petition sought to rezone the property from R-1 residential to C-2 commercial. After a recommendation for approval by the Madison County Planning and Zoning Commission, the Madison County Board of Supervisors approved the rezoning. In 2016, two developers presented plans to build a mini-storage facility and an office warehouse on the twenty-three acres to the Commission. On several occasions, the developers, nearby property owners, and attorneys met before the Commission to discuss the proposed site plans and the parties were able to agree to some, but not all of the contested issues. After hearing from the parties, the Commission subsequently recommended approval of the site plans, subject to the parties’ agreed-upon conditions, though some issues were left unagreed to by the parties. Julie Den Herder and several other nearby property owners appealed the Commission’s recommendation to the Board of Supervisors, which approved the Commission’s recommendation after oral argument. Herder appealed the Board’s decisions to the Madison County Circuit Court on the grounds that the Board’s 2006 rezoning was void and unenforceable, that the 2006 rezoning, even if valid, was conditioned upon restrictive covenants that prohibit the land’s use for mini-storage and the office space proposed, and that the approving the site plan was in error without a written request for conditional use. The circuit court found that the Board’s decisions were not arbitrary, capricious, discriminatory, illegal, or without substantial evidentiary basis. As a result, the circuit court affirmed the Board’s decisions to approve the site plans.

Because, pursuant to Miss. Code Ann. § 17-1-15, the record showed that proper notice was given and a public hearing was held, and because a change occurred in the character of the neighborhood to justify rezoning, the 2006 rezoning was valid. Further, because neither the minutes of the Commission nor the Board’s recommendation review referenced the restrictive covenants or any conditions to be placed upon the subject property, only the outdoor recreational storage portion of the plan required approval of a written request for conditional use, which was not part of 2016 site-plan approval, Herder’s alternative arguments were rejected. Therefore, the Court of Appeals affirmed the judgment of the Madison County Circuit Court.

Briefed by [Carson Phillips](#)

Court of Appeals – Post-Conviction Relief

Clayton v. State - Felony – Vehicle Theft – Evidence – In 2017, Ira Joseph Clayton lived with his girlfriend Rikiesha Williams and the two both used the 2012 Volkswagen Jetta that she owned. On May 26, 2017, Williams broke up with Clayton and asked him to leave her home. The couple got into a series of arguments that ended with Williams sustaining two gunshot wounds and Clayton leaving in Williams’s vehicle. Clayton was convicted of unlawfully possessing a motor vehicle by the Desoto County Circuit Court. On appeal, Clayton argued (1) the evidence was insufficient to support the conviction of unlawful possession of a motor vehicle and (2) the verdict was contrary to the weight of evidence. Clayton also filed a *pro se* supplemental brief and asserted eight additional assignments of error relating to (3) ineffective assistance of counsel, (4) a *Brady* violation, (5) inconsistent testimony, (6) medical expert testimony, (7) a directed verdict, (8) a *Sharplin* instruction, (9) the indictment, and (10) jury access to the police report.

(1) Because, due to the arguments between Clayton and Williams, there was sufficient evidence that Clayton took Williams’s car without authority, Clayton unlawfully possessed the motor vehicle. (2) Because the jury heard all of the available evidence, the verdict was not found to be so contrary to the overwhelming weight of evidence that to allow the verdict to stand would sanction an unconscionable injustice. (3) Further, because Clayton’s ineffective assistance of counsel claim had no constitutional dimensions, it was not ripe for direct appeal. (4) Because the evidence in question was not suppressed, there was no *Brady* violation. (5) Because a jury determines the credibility of testimony, any inconsistent testimony was a matter for the jury to determine. (6) Further, because Clayton was not convicted of assault, medical expert testimony was not needed. (7) Because sufficient evidence was presented at trial the circuit court did not err in denying a directed verdict. (8) Because it did not affect the charge on which Clayton was convicted, even though the circuit court erred in giving a *Sharplin* instruction, no prejudice resulted. (9) Because the indictment included Clayton’s prior convictions, he

had notice of the habitual-offender charge and the indictment claim was meritless. (10) Finally, because it was not admitted into evidence, the jury did not receive access to the police report and the denial of access to the report was proper. Therefore, the Court of Appeals affirmed the judgment of the Desoto County Circuit Court. Briefed by [Karen Lott](#)

[Jones v. State](#) - Jurisdiction – Procedural Bar – Mental Competency – On June 29, 2004, Victor Jones pled guilty to two counts of sexual battery in Pike County Circuit Court. The State recommended a lesser sentence but the circuit court judge imposed the maximum penalty of twenty years for each count to be served consecutively. Jones subsequently appealed, *pro se*, three times before this fourth appeal. Jones made several challenges, including (1) that the trial court erred in claiming it lacked jurisdiction, (2) that the trial court erred in finding that his PCR motion was procedurally barred, and (3) that he was not competent at the time of his plea agreement.

Because Miss. Code Ann. §99-39-7, which institutes requirements on filing PCR motions, was not applicable to Jones because he pled guilty, the trial court erred in finding that the court lacked jurisdiction. Additionally, because errors involving fundamental constitutional rights, such as convicting an incompetent defendant, are exempt from post-conviction procedural bars, the procedural bar did not apply to Jones’s PCR motion on competency. Finally, because the “voluminous record” showed Jones was competent when he pled guilty in 2004, Jones’s incompetency defense was without merit. Therefore, the Court of Appeals affirmed in part and reversed in part the judgment of the Pike County Circuit Court.

Briefed by [Brandon H. Wilson](#)

Court of Appeals – Criminal

[Dennis v. State](#) - Criminal Procedure – Jury Instructions – Indictment – Conway E. Dennis was convicted of aggravated assault for backing a minivan over Jerome Wolfe. Dennis’s girlfriend, Shayla Williams, shared a daughter with Wolfe and she visited his apartment on the day of the assault to collect money for their daughter. Dennis and Williams returned to Wolfe’s apartment that night and found Wolfe outside. After a verbal altercation between Dennis and Wolfe, Dennis backed the minivan over Wolfe, drove forward, and backed over Wolfe again before speeding off. Dennis was convicted of aggravated assault, and his motion for a judgment notwithstanding the verdict, or alternatively, a new trial, was denied. On appeal, Dennis argued the Forrest County Circuit Court improperly instructed the jury by giving an instruction which amended the indictment, deprived him of a defense, and created an impermissible presumption that an automobile is automatically a deadly weapon.

Because one of the jury instructions given advised the jury to determine whether the minivan was a deadly weapon, but did not alter the elements of proof necessary for a conviction, the jury instruction did not constructively amend the indictment. Further, because Dennis’s defense of accident was equally available to him with or without the jury instruction, the instruction did not deprive him of a defense. Lastly, because the unnecessary language did not prejudice Dennis even though the jury instruction unnecessarily advised the jury of the definition of a deadly weapon, the jury instruction was not improper. Therefore, the Court of Appeals affirmed the judgment of the Forrest County Circuit Court.

Briefed by [Baxter Geddie](#)

[Horn v. State](#) - Impartial Jurors – Jury Instructions – Cumulative Error – Jeffrey Horn was convicted of aggravated assault with a deadly weapon by a jury in Chickasaw County. Horn began a turbulent, sexual relationship with Regenia Higginbotham in September 2014, which resulted in physical altercations on more than one occasion. During one particular fight in March 2015, Horn suspected Higginbotham was going to the

bedroom to get a gun from under the mattress, so he followed her down the hallway and subsequently shot her in the leg with the gun he carried on his person.

Prior to trial, Horn's defense counsel requested striking Juror 23, who admitted to working through the night before but who wanted to stay. The trial court allowed Juror 23 to remain in the jury pool and she eventually ended up on the panel without a peremptory challenge from counsel. Both Juror 23 and Juror 20 were accused by defense counsel of sleeping during testimony on the first day of trial, but the judge allowed them to stay on the panel. After trial, Horn's sister testified that Juror 1's wife was the victim's direct supervisor at work. Horn appealed his conviction based on an unfair trial and due process resulting from sleeping and impartial jurors. The Court of Appeals determined, however, that merely voicing concerns about a juror was insufficient. Because Horn's counsel failed to use an available peremptory challenge and never made a motion during or at the end of trial to remove the sleeping jurors, the issue was not preserved for appeal. Further, there was no information on the record that Juror 1 knew the victim or was even aware of any relationship between the victim and his wife. Because no prejudice could therefore be inferred, Horn was not entitled to a new trial.

Horn also challenged a pre-arming jury instruction that he argued deprived him of his self-defense claim. He argued that the totality of these errors resulted in cumulative error, which should reverse his conviction. Because the pre-arming instruction was supported by evidence, the trial court did not abuse its discretion in allowing the instruction. Further, because each of Horn's arguments for reversal were rejected and not considered error, there could be no cumulative error to reverse or grant a new trial. Therefore, the Court of Appeals affirmed the judgement of the Chickasaw County Circuit Court.

Briefed by [Jack Schultz](#)

Taylor v. State - Criminal Procedure – Appeals – *Lindsey* Brief – Raquel Taylor was convicted of aggravated assault in the Madison County Circuit Court. After her arrest, Taylor waived her *Miranda* rights and made a statement to the police. During trial, she admitted that she hit the victim with a tire-iron in the parking lot of Northpark Shopping Mall following an argument inside the mall. Taylor was sentenced as a non-habitual offender to serve twenty years with sixteen years suspended after serving four years. Taylor appealed.

Upon reviewing the record, Taylor's counsel filed a *Lindsey* brief. The *Lindsey* brief asserted that after diligently searching the record and the procedural and factual history, there were no arguable issues to support an appeal. Counsel sent a copy of the *Lindsey* brief to Taylor and told her that she had the right to file a *pro se* supplemental brief within forty days. Taylor did not file a *pro se* brief. Because Taylor's attorney complied with *Lindsey's* requirements, the only task on appeal was determining if there were any arguable issues that required supplemental briefing. Because neither Taylor's counsel nor Taylor raised any issues requiring supplemental brief, there were no arguable issues on appeal. Therefore, the Court of Appeals affirmed the decision of the Madison County Circuit Court.

Briefed by [Tucker Hood](#)

Young v. State - Insufficient Indictments – Constructive Amendment – Sufficiency of Evidence – On the evening of May 26, 2015, fourteen-year-old Jane called Faron Young after Jane had an argument with her mother, Susan. Young picked up Jane in his truck, drove to a parcel of land, and had consensual sex with Jane. Afterward, Young drove Jane to his house, then dropped her off near a Walmart. Meanwhile, Susan had called Young twice looking for Jane, but Young denied having seen or heard from Jane during each call. Jane called Susan from the Walmart, and police picked her up. Young was arrested and charged with statutory rape and kidnapping. He was found guilty by jury in the Jones County Circuit Court. Young filed a motion for judgment notwithstanding the verdict, or in the alternative, a new trial, which the trial judge denied. On appeal, Young argued that (1) his indictment for statutory rape was insufficient; (2) a jury instruction constructively amended his indictment; and (3) the evidence was insufficient to support a conviction for kidnapping.

Because an amendment to Young's indictment affected merely its form, not its substance, the initial indictment was sufficient to inform Young of the nature and cause of the accusation. Because Young failed to

object to the jury instruction during trial, this issue was barred on appeal. Further, the jury instructions did not substantially alter the elements of the crime of kidnapping with which Young was charged. Lastly, because Young failed to return Jane against the wishes of her mother, the evidence was sufficient to uphold a conviction for kidnapping. Therefore, the Court of Appeals affirmed the judgment of the Jones County Circuit Court.
Briefed by [Michael Lambert](#)

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