

**MISSISSIPPI SUPREME COURT DECISIONS – JULY 25, 2019****SUPREME COURT - CIVIL CASES****PASS CHRISTIAN SCH. DIST. V. HARRISON CTY. YOUTH CT. OF MISS.****CIVIL - JUVENILE JUSTICE**

**JUVENILE LAW - CONFIDENTIALITY - DISCLOSURE OF YOUTH COURT RECORDS** - Parties entitled to the disclosure of youth court records are governed by Miss. Code Ann. § 43-21-261

**JUVENILE LAW - CONFIDENTIALITY - DISCLOSURE OF YOUTH COURT RECORDS** - Pursuant to Miss. Code Ann. § 43-21-261, a youth court judge may disclose youth court records at his discretion in instances when disclosure is required for the best interests of the child, public safety, or the function of the youth court

**JUVENILE LAW - EVIDENCE - IN CAMERA REVIEW** - Confidential youth court records may be transmitted to the circuit court for an in camera review for determination of disclosure

**FACTS**

E.C., a minor, alleged she was sexually assaulted by three other minors while on the campus of Pass Christian High School. The three minor alleged assailants were tried in the Harrison County Youth Court (“Youth Court”) and were adjudicated not delinquent. E.C.’s parents, Roy and Kimberly Cuevas, then sued the Pass Christian School District (“Pass Christian”) individually and as E.C.’s next friend in a negligence action in circuit court. Pass Christian attempted to obtain the three youth court files via subpoena duces tecum. In response, Youth Court moved for a protective order. The circuit court held that the disclosure of the record and transcript were within Youth Court’s discretion, and it granted Youth Court a protective order. Pass Christian then filed three separate petitions for the records in the youth court. Youth Court denied those petitions pursuant to Plaintiff’s objections. Pass Christian appealed to both the circuit court and the Supreme Court. The circuit court appeal was voluntarily dismissed. Youth Court entered an order excluding the youth court records and transcripts from the appellate record. Pass Christian again sought access to the youth court records by filing a Certificate of Examination and Proposed Corrections to the Record on Appeal in the youth court. One of the three minor alleged assailants objected to that motion. Pass Christian then filed a motion to correct the record on appeal in the youth court, to which the Plaintiffs objected. Youth Court entered an order denying Pass Christian access to the youth court records and trial transcript. Finally, Pass Christian attempted to gain access to the youth court records and trial transcript by filing a motion to correct the record on appeal with the Supreme Court, to which Plaintiffs and Youth Court objected; the Supreme Court entered an order denying Pass Christian’s motion.

**ISSUES**

Whether (1) denying the petitions for the youth court records was an abuse of discretion and (2) keeping the youth court records and trial transcripts confidential denied Pass Christian due process.

**HOLDING**

(1) Because Pass Christian was not an entity authorized by Miss. Code Ann. § 43-21-261 to receive confidential youth court records, denial of Pass Christian’s petitions was not an abuse of discretion. (2) Because Miss. Code Ann. § 43-21-261 permitted youth court records to be transmitted to judges of any other court, an in camera review conducted by the circuit court was appropriate. (3) Because the right to attack a witness’s credibility is secured by both the Mississippi Rules of Evidence and the confrontation clauses of both the state and federal constitutions, Pass Christian had a right to limited access to information which might prove vital to its defense. Therefore, the Supreme Court affirmed in part, and reversed and remanded in part the judgment of the Harrison County Youth Court.

**DISSENTS**

Presiding Justice King argued that the court improperly awarded Pass Christian a remedy it did not request. He further argued that an order for in camera review was inappropriate at this juncture because none of the parties shared privity of party with the minor the subject of the youth court case, and Pass Christian had not demonstrated substantial need of the materials in the preparation of its case and an inability to obtain those materials without undue hardship.

Justice Coleman argued that the youth court acted appropriately pursuant to the statute because the three minor alleged assailants were not parties to the civil suit and disclosure of their records was not in their best interests.

**Affirmed in Part; Reversed & Remanded in Part - 2017-CA-00915-SCT (July 25, 2019)**

Opinion by Justice Ishee - Dissents by Presiding Justice King & Justice Coleman

Hon. Margaret Alfonso (Harrison County Youth Court)

Edward C. Taylor & Katie Ryan Van Camp for Appellant - Scott Watson Weatherly Jr. & Terrence J. Lestelle for Appellees

Briefed by [Michael Sturgus](#)

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## STEWART V. MISSISSIPPI BAR

### CIVIL - BAR MATTERS

**BAR MATTERS - REINSTATEMENT - REQUIREMENTS** - In order to be reinstated to the bar, an attorney must satisfy the following five jurisdictional requirements of Mississippi Rule of Discipline 12: (1) state the cause or causes for suspension or disbarment; (2) give the name and current address of all persons, parties, firms, or legal entities who suffered pecuniary loss due to the improper conduct; (3) make full amends and restitution; (4) show that he has the necessary moral character for the practice of law; and (5) demonstrate the requisite legal education to be reinstated to the privilege of practicing law

### FACTS

Joe Gregory Stewart pled guilty to conspiracy to commit extortion under color of official right. Stewart was paying a Tunica County Sheriff's deputy to refrain from attending justice court, leading to the dismissal of DUI charges against Stewart's clients. Subsequently, the Supreme Court disbarred Stewart, but Stewart filed a petition for reinstatement on January 22, 2008. Prior to filing this petition, Stewart obtained ten letters of support and passed the Multi-State Professional Responsibility Exam. The Supreme Court denied Stewart's petition, finding that Stewart failed to demonstrate a fundamental change in his character. Stewart would file a second petition for reinstatement presenting evidence of his charitable activities as well as eighteen additional letters of support. However, Stewart failed to notify the bar about a previous criminal conviction that was expunged from his record and failed to assist the Mississippi State Bar ("the Bar") in its investigation of this expungement. When it was later discovered that Stewart had a criminal conviction expunged in the 1980s, Stewart declined to discuss his conduct which resulted in that expungement. Therefore, this Court denied Stewart's second petition. Finally, Stewart would file a third petition for reinstatement where Stewart divulged the details of his expunged conviction. Based on the new information regarding the circumstances of Stewart's expungement, the Bar conceded that Stewart had fully disclosed his prior drug offense. Stewart would file an amended petition for reinstatement demonstrating his additional involvement in the community, such as (1) taking on the role of a Boy Scout leader; (2) serving at Beauvoir, the Jefferson Davis home; and (3) volunteering regularly in various community organizations. Stewart also submitted thirty-seven letters of support. However, Stewart's conduct during his role as executive director at Beauvoir was less than satisfactory. As evidenced by correspondence from several Beauvoir staff members, Stewart often conducted himself unprofessionally in the form of offensive comments and a degrading management style, failing in his duty to always promote Beauvoir's best interests. Most significantly, Stewart neglected to follow the Mississippi Secretary of State's orders during his employment at Beauvoir. As a result of his previous felony conviction, the Secretary of State instructed Stewart that he could not access or control Beauvoir's funds. However, Stewart continued to manage the organization's funds and even signed checks on several accounts. On February 11, 2019, the Bar filed its amended answer and later filed a motion for reimbursement of costs and expenses incurred from their investigation of Stewart's reinstatement.

## ISSUE

Whether there was sufficient rehabilitation in conduct and character following disbarment to warrant reinstatement to the practice of law.

## HOLDING

Because Stewart failed to maintain the necessary moral character for the practice of law as evidenced by his dishonesty in response to the Bar's question regarding his prior expungement and his disregard of the Secretary of State's orders regarding his role at Beauvoir, thus lacking one of the jurisdictional requirements for reinstatement, and because Stewart had failed to demonstrate by clear and convincing evidence that he had been rehabilitated in conduct and character, Stewart's petition for reinstatement was denied. Therefore, the Supreme Court denied Stewart's third petition for reinstatement to the Mississippi Bar.

### **Denied - 2017-BR-01553-SCT (July 25, 2019)**

En Banc Opinion by Justice Griffis

S. Wayne Easterling for Petitioner - Melissa Selman Martin for Respondent

Briefed by [Jennifer Lee](#)

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## ***SUPREME COURT - ORDERS***

### **CHISM V. STATE**

#### **COURT ORDER**

**POST-CONVICTION RELIEF - PRESENTATION OF ISSUE IN PRIOR PROCEEDINGS - ILLEGAL SENTENCING** - Illegal-sentence claims are an exception to the waiver bar for claims not raised on direct appeal; however, to overcome that bar, the claim must have some arguable basis

**CONSTITUTIONAL LAW - SENTENCING - EX POST FACTO PROHIBITIONS** - A sentence as a habitual criminal is not to be viewed as either a new jeopardy or an additional penalty for earlier crimes but instead as a stiffened penalty for the latest crime

#### **ORDER**

Petitioner Adam Chism was convicted of burglary of a dwelling and sentenced as a habitual offender to life in prison. The Court of Appeals affirmed his conviction and sentence. Chism then filed an application for Leave to File Motion for Post-Conviction Relief, arguing that the habitual offender portion of his sentence was ex post facto punishment and thus an illegal sentence. While the Supreme Court recognized that an illegal-sentence claim was exempt from the waiver bar for claims not raised on direct appeal, it found Chism's claim to be barred for lack of an arguable basis because (1) the Mississippi Code clearly mandated that Chism be sentenced as a habitual offender to life in prison because he was convicted of two previous burglaries and at least one of these burglaries was a "crime of violence", as defined by Miss. Code Ann. § 97-3-2 and (2) despite the fact that burglaries were only statutorily classified as crimes of violence after Chism's prior convictions for burglary, his sentencing is not ex post facto punishment because an enhanced sentence as a habitual criminal is not an additional penalty for earlier crimes, but instead a heightened penalty for the current conviction. Therefore, the Supreme Court denied Chism's application for leave.

#### **OBJECTION**

Justice King disagreed with the court's denial of Chism's application. King argued that the court was judging Chism's motion on the merits rather than ascertaining whether or not there was an arguable basis for his claim. Further, he pointed out that the court was denying the application based on a highly divisive opinion by the Court of Appeals, which was ultimately decided by a vote of six to four in favor of upholding the sentence of the defendant. Justice King

reasoned that if there was such a large divide over the issue in the Court of Appeals, then surely Chism's claim provides an arguable basis. Accordingly, Justice King would have granted Chism's application for leave.

**Denied - 2018-M-01436 (July 25, 2019)**

En Banc Order by Justice Maxwell - Objection by Justice King

Briefed by [Cristofor Taylor](#)

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## HOLLOWAY V. STATE

### COURT ORDER

#### ORDER

James Holloway filed an application for leave to file a motion for Post-Conviction Relief ("PCR"). Holloway was convicted of armed robbery and was subsequently sentenced to life in prison as a habitual offender. The Court of Appeals affirmed Holloway's conviction. Before Holloway's most recent application, he had filed three previous post-conviction relief applications, all three of which were denied. In his recent application, Holloway made the same arguments that he made in his prior applications for PCR. The Court found that the application was (1) time-barred; (2) barred as a successive writ; and (3) barred by the doctrine of res judicata. Additionally, Holloway claims that he is serving an illegal sentence due to a late amendment to his indictment which charged him as a habitual offender. Regarding this issue, the Supreme Court found that Holloway's claim was procedurally barred because the claim had no factual basis for argument. The court also took the opportunity to warn Holloway that he could be subject to monetary sanctions if any of his future filings were deemed frivolous. The court further warned that any future frivolous filings could also result in restrictions on his ability to file applications for PCR in forma pauperis. Therefore, Holloway's application was dismissed.

#### OBJECTION

Presiding Justice King agreed that Holloway's application for PCR was without merit. However, he disagreed with the court's warning that future filings that the court deems frivolous may result in monetary sanctions or restrictions on Holloway's ability to file applications for PCR in forma pauperis. He argued that the court should simply deny or dismiss frivolous claims and that by seeking to punish Holloway for the frequency of his filings, the court was violating Holloway's constitutional right of access to the court.

**Denied - 2019-M-00380 (July 25, 2019)**

En Banc Order by Justice Maxwell - Objection by Presiding Justice King

Briefed by [Matthew Russ](#)

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## JOHNSON V. MISSISSIPPI BAR

### COURT ORDER

#### ORDER

Richard V. Johnson, Jr., was licensed to practice law in Mississippi. Johnson was suspended pursuant to a Mississippi Rule of Discipline regarding an attorney's personal incapacity to practice law. Johnson and his counsel filed a Motion for Reinstatement from Disability Inactive Status and for Referral to Complaint Tribunal. The Mississippi Bar ("the Bar") filed a motion to dismiss arguing that Johnson failed to support his motion with evidence that he was capable to return to law practice. The court denied Johnson's Motion for Reinstatement from Disability Inactive Status and the

Bar's motion to dismiss. Neither of the two parties satisfied the procedures provided under Mississippi Rules of Discipline 12 and 25 for a petition for reinstatement of an attorney suspended for personal incapacity. The Court remanded for further proceedings. The Bar filed an answer to Johnson's motion arguing that Johnson had met the requirements for reinstatement from disability inactive status. Johnson filed no response to the Bar's answer. Also before the Court in this order was the Bar's Motion for Reimbursement of Costs and Expenses. According to the Rules of Discipline for the Mississippi State Bar, the Supreme Court has "exclusive and inherent jurisdiction" over "attorney discipline, reinstatement and appointment of receivers for suspended and disbarred attorneys . . . ." After the court remanded the case for further proceedings and the Bar investigated Johnson's personal capacity, finding that he was no longer incapacitated after being sober for 10 years following his original suspension, the court held that Johnson could be removed from disability inactive status. The court granted Johnson's Motion for Reinstatement from Disability Inactive Status and for Referral to Complaint Tribunal. Because the two parties are in agreement about Johnson's capacity, there is no need to find on the merits his personal capacity. Also according to Mississippi Rule of Discipline 25, Johnson shall reimburse the Bar for actual costs and expenses incurred in this matter. Johnson was ordered to pay the amount of \$590.48.

**Affirmed - 2017-BR-01531-SCT (July 23, 2019)**

En Banc Order by Presiding Justice Kitchens

Briefed by [Liza Linginfelter](#)

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## MCCAIN V. STATE

### COURT ORDER

#### ORDER

Kevin Dale McCain's life sentence was affirmed by the Supreme Court in 2012. McCain filed an application, which was denied by the court in 2013. McCain then filed an "Application for Leave to Proceed in the Trial Court with Post-Conviction Motion Miss. Code Ann. § 99-39-27," outside the three-year statute-of-limitations period. McCain argued that his application should have been excepted from the procedural bars based on the intervening decision of *Sessions v. Dimaya*, 138 S. Ct. 1204, 200 L. Ed. 2d 549 (2018). The Court found that the *Dimaya* case did not meet the intervening-decision exception under Miss. Code Ann. § 99-39-5(2)(a)(i). McCain also argued that Mississippi's habitual offender law was unconstitutionally vague by not defining "crime of violence." The court found this claim had no arguable basis. Therefore, the court warned McCain that any future filings deemed frivolous may result in not only monetary sanctions but also restrictions in filing applications for post-conviction collateral relief (or pleadings in that nature) in forma pauperis.

#### OBJECTION

Justice King disagreed in part with the court's decision to deny McCain's application. Justice King stated that the court should not have warned that future filings the court deemed frivolous could result in monetary sanctions or restrictions on filing applications for post-conviction collateral relief in forma pauperis. He argued that imposing monetary sanctions upon a criminal defendant proceeding in forma pauperis only punishes or precludes that defendant from his lawful appeal right. Further, he argued that cutting off an indigent defendant's right to proceed in forma pauperis cuts off his constitutional right to access to courts. Therefore, Justice King objected that, while the application lacked merit, instead of threatening monetary sanctions or filing restrictions, the court should have simply dismissed or denied the application.

**Denied - 2013-M-00448 (July 25, 2019)**

En Banc Order by Justice Maxwell - Objection by Justice King

Briefed by [Joshua Crownover](#)

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## TAYLOR V. STATE

### COURT ORDER

#### ORDER

Thomas Taylor's conviction for capital rape was affirmed on appeal in 1999. Since Taylor's conviction was affirmed, he has filed approximately thirty petitions in the nature of post-conviction relief ('PCR'), all of which have been dismissed or denied. In one of those applications in June 2018, Taylor requested leave from the court to file a motion for PCR in the trial court on the ground that DNA evidence was available for testing. The court dismissed the application as procedurally time-barred and barred as a successive application. Further, the court previously warned that any future filings deemed frivolous may result in sanctions or restrictions on filing petitions. In Taylor's most recent application, the court found that it raised the identical ground for relief as the June 2018 application, and therefore, it was time-barred and barred as a successive application. Thus, the court denied Taylor's application for leave to proceed in the trial court and barred Taylor from filing further petitions for PCR in forma pauperis.

#### OBJECTION

Presiding Justice King disagreed with the court's decision to bar Taylor from filing any further petitions for PCR in forma pauperis. He argued that the court violated Taylor's state constitutional right to access to the courts. Furthermore, he argued that the court regularly bars indigent defendants while not barring those with more monetary resources. Justice King would have simply dismissed Taylor's petition for PCR.

**Denied - 2016-M-00454 (July 25, 2019)**

En Banc Order by Justice Maxwell - Objection by Presiding Justice King  
Briefed by [Philip Lott](#)

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## *SUPREME COURT - CRIMINAL CASES*

## ROSS V. STATE

### CRIMINAL - FELONY

**CRIMINAL PROCEDURE - JURY INSTRUCTIONS - POLLING** - The court must poll the jury at a party's request

**APPELLATE PROCEDURE - SENTENCING - DISCRETION** - This court cannot disturb a sentence on appeal so long as it does not exceed the maximum term allowed by statute

**APPELLATE PROCEDURE - BARS TO REVIEW - FAILURE TO OBJECT** - In order to have an issue for appeal a party must object

#### FACTS

Loren Ross was arrested for DUI. Ross had three prior DUI convictions, and he was indicted for fourth offense DUI in violation of Miss. Code § 63-11-30. The jury was instructed that it must find unanimously that the elements of Section 63-11-30(1)(a) or (1)(c) were violated. The jury returned a guilty verdict, and Ross requested that each juror be polled in terms of the unanimity issue. The trial court polled the jury about whether each juror's verdict was guilty, and each juror answered affirmatively. Ross did not object and the jury was dismissed. The trial judge then assigned Ross a sentence of ten years for felony DUI fourth offense. Ross appealed.

#### ISSUES

Whether the trial court (1) erred by failing to poll the jury to ascertain its unanimity in specifying the particular subsection of the DUI statute Ross violated and (2) abused its discretion in its imposition of the maximum sentence rather than ordering rehabilitation.

### **HOLDING**

(1) Because Ross did not object to the manner in which the jury was polled during the trial, he was procedurally barred from appealing the issue of whether the jury was properly polled. (2) Because the sentence assigned by the trial judge was within the statutory limits, its imposition was within the trial court's discretion. Therefore, the Supreme Court affirmed the judgment of the Rankin County Circuit Court.

#### **Affirmed - 2018-KA-00570-SCT (July 25, 2019)**

Opinion by Presiding Justice Kitchens

Hon. William E. Chapman, III (Rankin County Circuit Court)

George T. Holmes & Phillip Broadhead (Pub. Def. Office) for Appellant - Scott Stuart (Att'y Gen. Office) for Appellee

Briefed by [Winston Hudson](#)

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## **WARE V. STATE**

### **CRIMINAL - FELONY**

**CIVIL PROCEDURE - APPEALS - ARGUABLE ISSUES** - On appeal, if counsel does not find arguable issues for appeal, then the ruling of the trial court should stand

**CIVIL PROCEDURE - APPEALS - PRO SE BRIEF** - If the defendant does not submit a *pro se* brief, then the trial court's holding will be upheld

### **FACTS**

On February 10, 2015, Edward Lamar Ware went to Lakeshia Anderson's apartment in Starkville, Mississippi. Ware and Anderson had previously dated but were no longer in a relationship. When Ware arrived, Anderson was in her car on the way to the hospital. Ware pulled a gun on her, and she sped off. Later, when she returned home, she heard Ware beating on her door and instructed her children not to answer the door. Anderson's youngest daughter opened the door anyways, and an argument between Ware and Anderson ensued. Anderson's daughters heard Ware hit their mother. Anderson's youngest daughter called the police, and Officer Pedro Yerra of the Starkville Police Department responded to the call. Officer Yerra entered the house and learned that Ware was in the bedroom with Anderson's two daughters and had his gun. After multiple requests, Ware came out of the bedroom and was apprehended and taken into custody. Officer Yerra recovered Ware's gun and a magazine clip he had hidden inside the room, and Ware was sentenced as a habitual offender under Miss. Code Ann. § 99-19-81 to serve ten years in custody. Ware filed a motion for a judgment notwithstanding the verdict, or alternatively, a new trial, which was denied. Ware appealed.

### **ISSUE**

Whether the trial court erred in denying Ware's motion for a new trial or judgement notwithstanding the verdict.

### **HOLDING**

Because Ware's counsel searched the record and was unable to find any arguable issues for appellate review, and because Ware failed to file a *pro se* brief, the court held that the trial court did not err in denying Ware's motion. Therefore, the Supreme Court affirmed the judgment of the Oktibbeha County Circuit Court.

#### **Affirmed - 2018-KA-00239-SCT (July 25, 2019)**

Opinion by Justice Griffis

Hon. Lee J. Howard (Oktibbeha County Circuit Court)

Erin Elizabeth Briggs (Pub. Def. Office) for Appellant - Scott Stuart (Att'y Gen. Office) for Appellee

Briefed by [Jack Byrd](#)

MISSISSIPPI COURT OF APPEALS DECISIONS – JULY 23, 2019

COURT OF APPEALS - CIVIL CASES

ALFORD V. ALFORD

CIVIL - DOMESTIC RELATIONS

**DIVORCE - EQUITABLE DISTRIBUTION - VALUATION OF PROPERTY** - A business's fair market value is a question for the trier of fact and the court defers to the chancellor's findings of fact when supported by the evidence and not manifestly wrong; a challenge of this valuation is incumbent on the parties, not the chancellor, to bring forth evidence or rebut the valuation used

**DIVORCE - ALIMONY - HARRIS RETIREMENT** - Under *Harris*, derivative Social Security benefits will not justify a subsequent modification of alimony if the benefits were anticipated or foreseeable at the time of the divorce, but it is a circumstance that the chancellor should consider in making the initial determination of alimony

**DIVORCE - SPOUSAL SUPPORT - COUNSEL FEES** - If the record is insufficient to demonstrate a party's inability to pay attorney's fees, then an award of attorney's fees is an abuse of discretion

**FACTS**

In dividing the marital assets in the divorce of Linda Alford and Cincinnatus ("Nat") Alford, the chancellor adopted expert witness John Paris's asset valuation approach. Using this approach, Paris valued Nat's twenty-five percent interest in Cannonwall Plantations Inc. ("Cannonwall") at a net fair value of \$138,318. Paris used an asset-based approach, measuring only the fair value of the company's assets and liabilities excluding good will, to make this valuation and primarily relied on an appraisal that Nat provided. After adopting Paris's valuation, the chancellor awarded Nat's interest in Cannonwall to Nat. To make up the difference between her income and her expenses, Linda asked the court to award her periodic alimony. This was done with the assumption that when Linda began drawing Social Security retirement benefits based on Nat's earnings, her alimony automatically would be reduced by the amount of those benefits. This assumption was consistent with the law at the time. The chancellor awarded Linda \$5,000 in permanent periodic alimony. Linda testified that she had been paying \$1,000 per month in attorney's fees and \$500 per month to Paris's firm. Linda also stated that while she had been able to make these monthly payments, it was difficult to do so. Additionally, her attorney testified that Linda would certainly have enough money to pay her fees if she was awarded fifty-percent of marital assets. The chancellor awarded Linda nearly half of the marital assets while also awarding \$6,000 in expert witness fees and \$5,000 in attorney's fees. Nat appealed.

**ISSUES**

Whether the chancellor erred by (1) accepting Paris's valuation of Nat's twenty-five percent interest in Cannonwall; (2) awarding Linda periodic alimony of \$5000 per month; and (3) awarding Linda attorney's fees and expert witness fees.

**HOLDING**

(1) Because Paris's valuation of Cannonwall essentially followed a method approved in a prior case and was supported with the expert testimony at trial, and because Nat neither offered an alternative valuation nor presented any evidence the valuation was incorrect, the chancellor's valuation was not clearly erroneous. (2) Because the chancellor's alimony award did not take into account that the parties clearly foresaw that Linda would soon receive Social Security retirement benefits, the alimony award must be reevaluated to comply with *Harris*, and the chancellor must determine alimony based on the circumstances as they exist at the time of remand. (3) Because Linda had the ability to pay some of her attorney and expert fees, the chancellor abused his discretion by awarding such fees. Therefore, the Court of Appeals affirmed in part, reversed and remanded in part, and reversed and rendered in part, the judgment of the Sharkey County Chancery Court.



## CONCURRENCE

Judge Greenlee argued that *Harris* has potentially drastic and detrimental effects. He stated that the decision tasks chancellors with trying to calculate the impact retirement will have on the parties' earnings with the potential of a party never retiring in order to meet the alimony requirement and makes a party enslaved until death to the chancellor's predictions. Furthermore, retirement is a substantial change to one's circumstances and should be allowed when considering a modification of alimony.

### **Affirmed in Part; Reversed & Remanded in Part; Reversed & Rendered in Part - 2017-CA-01075-COA (July 23, 2019)**

Opinion by Presiding Judge J. Wilson - Concurrence by Judge Greenlee

Hon. Vicki R. Barnes (Sharkey County Chancery Court)

Steven Todd Jeffreys for Appellant - J. Mack Varner & Clifford C. Whitney III for Appellees

Briefed by [Haley Nutt](#)

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## **HOLLAND V. MISS. DEP'T OF REHAB. SERVS.**

### **CIVIL - PERSONAL INJURY**

**CIVIL PROCEDURE - SERVICE OF PROCESS - TIMELINESS** - Miss. R. Civ. P. 4(h) mandates that a plaintiff serve process upon the defendants in a lawsuit within 120 days of filing the complaint

**CIVIL PROCEDURE - FAILURE TO SERVE - GOOD CAUSE** - A plaintiff who does not serve the defendant within the 120-day period must show good cause for failing to serve process

### FACTS

Cynthia Holland was involved in a motor vehicle accident with an employee of the Mississippi Department of Rehabilitation Services ("MDRS"). Holland filed her complaint and hired a process server, Davy Keith, to serve copies of the complaint and summons to all named defendants, including MDRS through the Attorney General's Office. Service of process was, at this time, within the 120-day deadline required by Miss. R. Civ. P. 4(h). Holland's counsel received a confirmation email from Keith that all defendants had been served and affidavits would be mailed. However, when counsel received the affidavits showing proof of service, it was discovered that, due to a computer error, the Attorney General's Office was not served with the complaint and summons. Holland's counsel then notified Keith to immediately serve the Attorney General's Office, which he did. Service of process was, by this time, sixteen days past the 120-day deadline. The following day, Holland filed a motion for determination that service was proper upon MDRS or alternatively for an extension of time to serve process. The Forrest County Circuit Court denied Holland's motion and granted MDRS's motion to dismiss for failure to properly serve, finding that Holland failed to establish good cause and failed to properly serve MDRS within 120 days. Holland appealed.

### ISSUE

Whether the circuit court erred by finding that Holland failed to establish good cause for failure to properly serve MDRS.

### HOLDING

Because Holland made a diligent effort to timely serve MDRS and took immediate actions to perfect process, she established good cause to warrant an extension of time to serve and thus dismissal was an abuse of discretion. Therefore, the Court of Appeals reversed and remanded the judgment of the Forrest County Circuit Court.

### DISSENT

Presiding Judge Reeves argued that Holland failed to establish good cause. Citing prior case law, he argued that a more attentive review of the file would have alerted Holland's counsel that the Attorney General's Office had not been served and their failure to do so demonstrated a lack of diligence to establish good cause. Additionally, Judge Reeves noted that, regarding a trial court's finding of fact on the existence of good cause, appellate review is limited to determining

only whether the trial court abused its discretion and whether there was substantial evidence supporting the determination. Judge Reeves argued there was no abuse of discretion in finding that Holland failed to establish good cause, and as such, he would affirm the circuit court's judgment.

**Reversed & Remanded - 2017-CA-01480-COA (July 23, 2019)**

En Banc Opinion by Judge Tindell - Dissent by Presiding Judge Reeves

Hon. Robert B. Helfrich (Forrest County Circuit Court)

Paul Manion Anderson, Cory Nathan Ferraez, Samuel Steven McHard, & Marcus Alan McLelland for Appellant - Bradley Adam Hays, Michael D. Goggans, & Christopher Owen Massenburg for Appellees

Briefed by [Melissa Fenwick](#)

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## PUTNEY V. SANFORD

### CIVIL - REAL PROPERTY

**CIVIL PROCEDURE - JURISDICTION - STANDING** - Parties have standing to seek a declaratory judgment when they assert a colorable interest in the subject matter of the litigation or experience an adverse effect from the conduct of the defendant, or as otherwise provided by law

**CIVIL PROCEDURE - JOINDER - NECESSARY PARTY** - Miss. R. Civ. P. 19(a) provides that a party should be joined if complete relief cannot be afforded among those already parties, if the party's absence would impair or impede his ability to protect his interest, or would leave any persons already parties subject to a substantial risk of incurring double, multiple, or inconsistent obligations

**PROPERTY - EQUITABLE DEFENSES - LACHES** - A party asserting the defense of laches must show: (1) a delay in asserting a right or claim; (2) that the delay was not excusable; and (3) that there was undue prejudice to the party against whom the claim is asserted

### FACTS

Allen John Putney and Lina Louise Putney transferred 196 acres of land to Carl Mann via warranty deed ("Putney-Mann deed") and pursuant to a contract for the sale and purchase of real property. About two years later, Mann transferred the land to Danny R. Sanford via warranty deed ("Mann-Sanford deed"). Sanford became aware of an error in the land description of Tract 1 in the Putney-Mann deed, and attorney B. Scott Buffington filed an affidavit of scrivener's error to correct the error. Sanford filed a petition for declaratory judgment to have the title to the disputed parcels vested in his name, and a trial was held. Mann testified at trial that he intended to buy the 196 acres described in the contract and that neither he nor the Putneys were aware of the error. Mr. Putney testified that he had intended to sell 194 of the 196 acres to Mann. The chancery court found that the Putney-Mann deed contained an error and that the affidavit properly corrected the Putney-Mann deed to reflect the intention of the parties. The chancery court also found that the Putneys intended to convey the entire 196 acres and vested title to all the property described in the Mann-Sanford deed to Sanford. The Putneys appealed.

### ISSUES

Whether (1) the court had jurisdiction to consider the appeal; (2) there was standing to seek declaratory judgment and a cause of action was stated; (3) Sanford failed to join a necessary party to the action; and (4) the claim was barred by the doctrines of estoppel and/or laches.

### HOLDING

(1) Because Sanford did not object to the timeliness of the Putneys' appeal, and because no party raised the timeliness of the Putneys' Rule 59(e) motion, the court had jurisdiction to consider the appeal. (2) Because Sanford was an interested party to the Mann-Sanford deed, and because the Putneys called the validity of the warranty deeds into question, Sanford had standing to seek declaratory judgment and stated a cause of action. (3) Because Mann's presence in the matter would not affect a final determination between Sanford and the Putneys, Mann was not a necessary party

to the action. (4) Because the Putneys failed to provide any support in the record that Sanford's claim was barred by estoppel or laches, the assignment of error was without merit. Therefore, the Court of Appeals affirmed the judgment of the Covington County Chancery Court.

**Affirmed - 2018-CA-00454-COA (July 23, 2019)**

Opinion by Judge Wilson

Hon. David Shoemake (Covington County Chancery Court)

Robert Wendell James for Appellants - Corey Daniel Gibson for Appellee

Briefed by [Allison Middleton](#)

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## SIMPSON V. STATE

### CIVIL - OTHER

**CIVIL PROCEDURE - APPEALS - ISSUE PRESERVATION** - Issues not raised before the trial court may not be raised on appeal

**CIVIL PROCEDURE - APPEALS - WRIT OF HABEAS CORPUS** - In a habeas corpus proceeding, the trial court's judgment is presumptively correct, meaning the court's judgment will not be disturbed on appeal unless it is evident that the court tried the case upon an erroneous conception of the law, or that the judgment is erroneous upon the facts

**CIVIL PROCEDURE - APPEALS - IN FORMA PAUPERIS** - There is no right to appeal in forma pauperis in a civil action, unless a fundamental right is at issue

### FACTS

After Milton Simpson was arrested for identity theft and false pretense, he waived his initial appearance, and the Lee County Justice Court set his bond at \$10,000. Simpson subsequently filed an appeal for habeas corpus with the Lee County Circuit Court alleging: (1) illegal search; (2) arrest without probable cause; (3) failure to provide him a copy of the affidavit of complaint; (4) unlawful detention; (5) denial of a preliminary hearing; (6) failure to provide adequate medical treatment during his confinement; (7) excessive bail; and (8) unnecessary force. A couple weeks later, Simpson was booked into the jail in Shelby County, Tennessee, on a different charge. This transfer caused the circuit court to dismiss the excessive bail and medical treatment claims as moot, while granting Simpson's request for a preliminary hearing in part by ordering a hearing before the Lee County Justice Court upon his return to Mississippi custody. Simpson appealed in forma pauperis ("IFP").

### ISSUES

Whether (1) Simpson could raise several new issues on appeal; (2) the circuit court improperly dismissed a portion of Simpson's claims; and (3) the circuit court should have granted motion for leave to proceed IFP.

### HOLDING

(1) Because Simpson did not include several issues at the trial level, and because issues not raised before the trial court may not be raised on appeal, his suggestions of error regarding failure to provide adequate legal assistance, failure to prosecute, and sovereign immunity were barred from appellate review. (2) Because Simpson was transferred out of Mississippi custody prior to the circuit court's consideration of his petition for habeas corpus, and because the circuit judge's decision finding the issues moot was in accordance with similar cases, the circuit court did not improperly dismiss Simpson's bail and medical treatment claims. (3) Because one can appeal IFP when a fundamental right is at issue and Simpson is appealing, inter alia, the fundamental right to bail, the circuit court properly granted Simpson's motion for leave to proceed IFP on appeal. Therefore, the Court of Appeals affirmed the judgment of the Lee County Circuit Court.

**Affirmed - 2018-CP-00780-COA (July 23, 2019)**

Opinion by Chief Judge Barnes  
Hon. Thomas J. Gardner III (Lee County Circuit Court.)  
*Pro se* for Appellant - Darrell Clayton Baughn (Att’y Gen. Office) for Appellee  
Briefed by [Kaitlin Bethay](#)

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## SMITH V. STATE

### CIVIL - OTHER

**CRIMINAL PROCEDURE - AUTHORITY - PAROLE** - The Parole Board, not the courts, has exclusive authority over the grant or denial of parole

**CRIMINAL PROCEDURE - SENTENCING - PAROLE ELIGIBILITY** - Every prisoner who has been convicted of any offense against the State of Mississippi may be released on parole; however, an inmate is not guaranteed parole, even when eligible

**APPELLATE PROCEDURE - AUTHORITY - AFFIRMANCE** - An appellate court has the authority to affirm a trial-level court when it reaches the correct result, even when that court’s reasoning was incorrect

### FACTS

Donald Smith filed a motion for release from incarceration, believing he was eligible to be released on parole. In 1973, Smith admitted to committing murder, and in turn received a life sentence plus an additional seventy-five years for robbery and kidnapping. Before the end of the 1970s, Smith was convicted on four separate counts of aggravated assault, which added forty-two more years to run consecutively to his 1973 sentences. In 2017, Smith filed a petition for release under Miss. Code Ann. § 47-5-139. The trial court denied the request, holding that Smith had not served the mandatory time required for parole eligibility for the conviction of murder, robbery, or kidnapping. Smith appealed.

### ISSUE

Whether the trial court erred in denying Smith’s petition for release from incarceration.

### HOLDING

Because the Parole Board has exclusive authority over the grant or denial of parole, the trial court’s miscalculation of Smith’s parole eligibility was immaterial, and thus the trial court did not err in denying Smith’s petition for release. Therefore, the Court of Appeals affirmed the judgment of the Forrest County Circuit Court.

### **Affirmed - 2018-CP-00814-COA (July 23, 2019)**

Opinion by Judge McCarty  
Hon. Robert B. Helfrich (Forrest County Circuit Court)  
*Pro se* for Appellant - Darrell Clayton Baughn (Att’y Gen. Office) for Appellee  
Briefed by [Harrison Smith](#)

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

## BRUNET V. STATE

### CIVIL - POST-CONVICTION RELIEF

**POST CONVICTION RELIEF - SENTENCING - STATUTORY LIMITS** - Sentencing is generally not subject to appellate review, so long as the sentence imposed is within the limits prescribed by the applicable statute

**POST CONVICTION RELIEF - SENTENCING - PROPORTIONALITY** - Sentences are deemed to be proportional if they are within the statutory limits, not grossly disproportionate to the crime charged, and similar to sentences imposed on similarly situated criminals for the same crimes

### **FACTS**

In October 2016, Charles Brunet pled guilty to two counts of sexual battery on two children and three counts of child molestation on another child. The criminal acts took place between 2011 and 2015. Brunet was almost 76 years old at the time of sentencing. Due to Brunet’s advanced age, the State recommended a sentence of 15 years, with 12 years to serve and 3 years suspended for each count. In addition, the sentences were to run concurrently. The trial court accepted the State’s recommendation and noted the sentences would be served day-for-day because the offenses were sex-crimes. In May 2018, Brunet filed a self-styled “Motion to Correct Illegal Sentence.” He argued that his sentence violated his constitutional right to due process because it exceeded his life expectancy and was therefore cruel and unusual punishment. The trial court treated Brunet’s motion as a PCR petition and found that his sentence was not excessive because it was within the statutory limits for the crimes, nor was his sentence disproportionate to other sentences imposed for the same crimes. Brunet appealed.

### **ISSUES**

Whether the trial court erred by (1) abusing its discretion in sentencing Brunet to five concurrent sentences which exceeded his life expectancy, violating his right to due process and constituting cruel and unusual punishment and (2) failing to perform a proportionality analysis before sentencing.

### **HOLDING**

(1) Because sentencing is generally not subject to appellate review if a sentence falls within the statutory limits, and because the imposed sentences were lenient with regard to the statutory limits of 15 and 30 years for the crimes he committed, the trial court did not abuse its discretion in sentencing Brunet in excess of his life expectancy. (2) Because there is no requirement for a trial court to conduct a proportionality analysis sua sponte, and because the trial court sentenced Brunet to a term well below the statutory limits imposed on other criminals for the same crime, the trial court did not err by failing to perform a proportionality analysis before sentencing. Therefore, the Court of Appeals affirmed the judgment of the Jones County Circuit Court.

**Affirmed - 2018-CP-00969-COA (July 23, 2019)**

Opinion by Chief Judge Barnes

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

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

Briefed by [David Boydston](#)

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

### **BISHOP V. STATE**

#### **CRIMINAL - FELONY**

**EVIDENCE - MISS. R. EVID. 609 - CONVICTION** - When cross-examining a witness on their truthfulness, Miss. R. Evid. 609(a) allows only convictions to be discussed, not indictments or non-adjudications

**CRIMINAL PROCEDURE - CROSS-EXAMINATION - ABUSE OF DISCRETION** - Generally, Mississippi affords “wide-open cross examination” to all relevant matters but may limit it so long as its discretion in excluding evidence is not abused; abuse of discretion is found only where the defendant shows clear prejudice from undue restraint on the defense

**CRIMINAL LAW - STATUTORY RAPE - PROOF** - Victim testimony alone may prove penetration; medical evidence is not necessary

### **FACTS**

Two minors accused Sidney Bishop of sexual abuse. Bishop, a grown man living in Attala County, met one of the girls, Alice, and her mother through his church and later allowed them to live in his garage apartment when they were evicted. Alice later accused Bishop of sexual battery and statutory rape. The other girl, Brenda, was Bishop's neighbor who also later accused him of sexual battery. He was convicted of four counts of gratification of lust, two counts of sexual battery, and one count of statutory rape. At trial, the State relied upon Alice's testimony alone to prove penetration and convict Bishop of statutory rape. The court also limited Bishop's cross-examination of Brenda's mother by not allowing him to inquire about past charges against her or the presence of another man suspected of sexual abuse. Bishop filed for a JNOV or a new trial, and the trial judge denied both. Bishop appealed.

### **ISSUES**

Whether (1) the evidence was sufficient for a statutory rape conviction or the verdict was contrary to the overwhelming weight of the evidence; (2) Bishop was irreparably prejudiced by an improper limitation of his cross-examination of Brenda's mother; (3) the trial court erred by excluding evidence that Brenda had been in the presence of another man suspected of abuse; and (4) trial counsel was ineffective for failing to request an alibi instruction.

### **HOLDING**

(1) Because a victim's testimony can be sufficient to prove penetration, the State held that Alice's testimony would allow reasonable, fair minded jurors to find that the State proved penetration beyond a reasonable doubt. Also, because the jury weighed the conflicting testimony and determined Alice's testimony to be more credible than Bishop's, the jury's verdict was not against the overwhelming weight of the evidence. (2) Because Bishop's cross-examination of Brenda's mother was in regards to a pending charge and a non-adjudication instead of an actual conviction, the trial court did not abuse its discretion in limiting his cross-examination. (3) Because the evidence Bishop sought to introduce in cross-examination had nothing to do with the issues at hand in this case, the trial court did not abuse its discretion in limiting the cross-examination of Brenda's mother. (4) The court declined to address Bishop's ineffective-assistance-of-counsel claim on appeal because the claim did not affirmatively show ineffectiveness of constitutional dimensions but was based on facts not fully approved from the record, including his counsel's strategy and tactics. Therefore, the Mississippi Court of Appeals affirmed the decision of the trial court.

**Affirmed - 2018-KA-00487-COA (Jul. 23, 2019)**

Opinion by Judge C. Wilson

Hon. Joseph H. Loper Jr. (Attala County Circuit Court)

George T. Holmes (Pub. Def. Office) for Appellant - Matthew Wyatt Walton (Att'y Gen. Office) for Appellee

Briefed by [Reid Hudson](#)

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## **EVANS V. STATE**

### **CRIMINAL - FELONY**

**SENTENCING - SENTENCING PROCEEDINGS - FACTORS ENHANCING SENTENCE** - Miss. Code Ann. § 97-37-37 provides for two sentence enhancements for the use or display of a firearm during the commission of a felony

**CONSTITUTIONAL LAW - SENTENCING PROCEEDINGS - NOTICE** - Under *Sallie*, the State must give the defendant pretrial notice of its intent to enhance a sentence based on a firearm enhancement, and lack of notice is a violation of due process

### **FACTS**

Quayteace Evans was indicted for first-degree murder and attempted murder, but, following a jury trial, the jury found Evans guilty of the lesser-included offenses of manslaughter and aggravated assault. Evans was sentenced to serve a total of forty-five years as follows: twenty years for manslaughter, twenty years for aggravated assault, and five years for using a firearm during the commission of the aggravated assault pursuant to Miss. Code Ann. § 97-37-37. The five-year firearm enhancement was included within Evans's sentence for aggravated assault, totaling twenty-five years for aggravated assault. Evans appealed.

### ISSUE

Whether the trial court erred in allowing the five-year firearm enhancement pursuant to Miss. Code Ann. § 97-37-37.

### HOLDING

Because the record lacked a showing that Evans received any pretrial notice of the State's intent to seek a firearm enhancement, the court held it was bound to reverse and render the firearm enhancement based on the Supreme Court's decision in *Sallie*. Therefore, the Court of Appeals affirmed in part and reversed and rendered in part the judgment of the Scott County Circuit Court.

#### **Affirmed in Part; Reversed & Rendered in Part - 2018-KA-01028-COA (July 23, 2019)**

Opinion by Presiding Judge J. Wilson

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

Erin E. Briggs (Pub. Def. Office) for Appellant - Abbie Eason Koonce & Steven Simeon Kilgore (Att'y Gen. Office) for Appellee

Briefed by [Nicole Broussard](#)

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## GREENE V. STATE

### CRIMINAL - FELONY

**CRIMINAL PROCEDURE - CONVICTION - REVERSAL** - A conviction should only be reversed on appeal if the trial court abused its discretion and caused prejudice to the defendant

**CRIMINAL PROCEDURE - EVIDENCE - AUTHENTICATION** - A party must present a prima facie case of authenticity before evidence can be submitted to a jury

**CRIMINAL PROCEDURE - EVIDENCE - ELECTRONIC SOURCE** - A heightened level of authentication is required in order for a jury to reasonably rely on electronic evidence

### FACTS

Michael Greene was convicted of possession of a firearm by a felon after Officer Brandon Caston of the Jackson Police Department discovered a handgun in Greene's vehicle during an administrative checkpoint. At the check point, Officer Caston saw a gun under Greene's foot after asking Greene for his driver's license and proof of insurance. Officer Caston retrieved the handgun and ran it through the system. When he suspected Greene of being a felon, Officer Caston reached for his handcuffs, and Greene fled the scene. Greene was later arrested and brought to trial in the Hinds County Circuit Court. The State attempted to use a photograph and video from a Facebook account to link the handgun to Greene. The blurry photograph included a man whose face was partially concealed by a box of handgun ammunition, and the video consisted of a man speaking about his car and gun being taken from him. The photograph and video were not produced in discovery but were presented to the trial court the morning of Greene's trial. Greene's trial council argued that the Facebook evidence should be excluded due to untimely submission and suppressed for lack of authentication. The State claimed the evidence was discovered at 1:00 AM the morning before trial and that it could be authenticated at trial through the testimony of Detective Jerry Shoulders. Officer Caston's testimony was given at trial, and it is undisputed that Greene was a felon during the incident. The trial court denied Greene's motion to suppress, and the jury found Greene guilty of possession of a firearm by a felon. The trial court sentenced Greene to ten years as a habitual offender without the possibility of reduction, suspension, or parole. Greene appealed.

### ISSUE

Whether the trial court erred in admitting unauthenticated evidence obtained through Facebook.

### **HOLDING**

Because overwhelming evidence was presented against Greene at trial, he was not prejudiced by the trial court improperly admitting unauthenticated evidence obtained from Facebook. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Circuit Court.

### **CONCURRENCE**

Presiding Judge Wilson argued that the trial court did not err in admitting the Facebook evidence at trial. He criticized the majority opinion's application of precedent involving authentication of Facebook evidence and highlighted the trial court's reasoning for admitting the evidence.

#### **Affirmed - 2018-KA-00122-COA (July 23, 2019)**

Opinion by Judge McCarty - Concurrence by Presiding Judge J. Wilson

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

W. Daniel Hinchcliff (Pub. Def. Office) for Appellant - Laura Hogan Tedder (Att'y Gen. Office) for Appellee

Briefed by [Luke Seymour](#)

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## **JOHNSON V. STATE**

### **CRIMINAL - FELONY**

**CRIMINAL PROCEDURE - INEFFECTIVE ASSISTANCE OF COUNSEL - TIMING OF THE MOTION** - An ineffective assistance of counsel challenge is properly brought during post-judgment proceedings

**CRIMINAL PROCEDURE - INEFFECTIVE ASSISTANCE OF COUNSEL - SCOPE OF REVIEW** - When the trial court record contains insufficient evidence for the appellate court to conclude that the defendant received ineffective assistance of counsel, the appellate court should affirm the verdict without prejudice to the defendant's right to raise the issue through post-conviction proceedings

### **FACTS**

C.D., a minor and the granddaughter of Roscoe Johnson's wife, alleged that Johnson committed five separate acts of sexual abuse against her, including two attempts to forcibly perform vaginal and anal intercourse on her. At trial, Shavonne Taylor, a family protection specialist with the Mississippi Department of Human Services, testified that her investigation revealed that sexual abuse had occurred. When specifically asked if the abuse involved C.D., Taylor responded that it involved both C.D. and her brother, S.M. Johnson's attorney immediately objected and moved for a mistrial based on this testimony. The trial judge denied the mistrial because Johnson's attorney did not file a motion in limine to keep out testimony related to abuse allegations against Johnson other than C.D.'s, which Johnson later claimed constituted ineffective assistance of counsel. The trial court instructed the jury to disregard the testimony and Johnson was found guilty of sexual battery pursuant to Miss. Code Ann. § 97-3-95(2). Johnson appealed.

### **ISSUE**

Whether Johnson suffered ineffective assistance of counsel, unjustly leading to his conviction.

### **HOLDING**

Because the trial record contained insufficient evidence to adequately address Johnson's claim of ineffective counsel, the court affirmed the verdict without prejudice to Johnson's right to raise the issue through post-conviction relief proceedings. Therefore, the Court of Appeals affirmed the judgment of the Leflore County Circuit Court.

#### **Affirmed - 2018-KA-00101-COA (July 23, 2019)**

Opinion by Judge Lawrence

Hon. Carol L. White-Richard (Leflore County Circuit Court)



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## KIDD V. STATE

### CRIMINAL - FELONY

**CONSTITUTIONAL LAW - SIXTH AMENDMENT - CONFRONTATION CLAUSE** - The Confrontation Clause is waivable if the issue is not raised at trial or in a post-trial motion

**CRIMINAL LAW - PROSECUTORIAL MISCONDUCT - WAIVER** - Failure to object contemporaneously at trial to prosecutorial misconduct waives any claim of error on appeal

**CRIMINAL LAW - COUNSEL - INEFFECTIVE ASSISTANCE OF COUNSEL** - In order to prove ineffective assistance of counsel, a defendant must show: (1) counsel's performance was deficient and (2) the deficient performance prejudiced the defense

### FACTS

On September 17, 2016, upon arriving to his home in Hattiesburg, Mississippi, Eugene Buckley noticed Kunta Kidd drinking beer in his front yard. As Buckley began to open his door, a second man knocked him down, beat him, and searched his clothing. Buckley testified that while he was getting beat, he lied and told the assailants that his friend, Robert Boles, had his money. Upon arriving to Boles's home, Kidd stayed in the vehicle with Buckley while the second man went to the door. Because Boles's told them he did not have money, the men took Buckley back to his house and continued to beat him. Before leaving, Kidd used a cigarette lighter to set Buckley on fire. David Alexander, Buckley's nephew, returned while he was on fire and threw a sheet over him to extinguish the flames. Alexander took Buckley to Forrest General Hospital, where he was then airlifted to the burn center. In the hospital, Buckley identified Kidd as one of the suspects. After hearing various testimonies, the jury found Kidd guilty of kidnapping and aggravated assault. The trial court sentenced Kidd to serve consecutive terms of life. After denial of his post-trial motion, Kidd appealed.

### ISSUES

Whether (1) the evidence was insufficient to support his convictions; (2) the jury's verdict was against the overwhelming weight of evidence; (3) Kidd was denied his right to confrontation and his right to compulsory process; (4) the prosecutor engaged in prosecutorial misconduct; and (5) Kidd received ineffective assistance of counsel.

### HOLDING

(1) Because testimony was elicited that Kidd held Buckley in the car against Buckley's will and later doused Buckley with gasoline and set him ablaze, any rational trier of fact could have found the essential elements of kidnapping and aggravated assault beyond a reasonable doubt, so the issue was without merit. (2) Because the reliability of witnesses is for the jury to decide and the State presented sufficient evidence that Kidd committed the crimes, the jury's verdict was not disturbed. (3) Because Kidd neither asserted his compulsory rights nor objected at trial or in his post-trial motion, the claim was deemed waived. (4) Because Kidd's defense counsel did not object to the prosecutor knowingly providing false testimony, questioning in violation of M.R.E. 404(b), improperly vouching for witnesses, and interrupting Investigator Bounds' testimony, the right to raise the alleged prosecutorial misconduct was waived. (5) Because there was no obvious deficiency in Kidd's counsel's representation based on the record before the court, and because the State had not stipulated that the record was adequate to address Kidd's claims, Kidd's ineffective-assistance-of-counsel claims were

dismissed without prejudice. Therefore, the Court of Appeals affirmed the judgment of the Forrest County Circuit Court.

**Affirmed - 2018-KA-00171-COA (July 23, 2019)**

Opinion by Judge Greenlee

Hon. Robert B. Helfrich (Forrest County Circuit Court)

Erin Elizabeth Briggs (Pub. Def. Office) for Appellant - Laura Hogan Tedder (Att’y Gen. Office) for Appellee

Briefed by [Brittany Brewer](#)

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## NEWELL V. STATE

### CRIMINAL - OTHER

**CRIMINAL PROCEDURE - SURETY - DEFINITION** - “Surety” means the insurer or personal surety agent guaranteeing the bail bond and for the purpose of process does not mean the agent of such insurer or personal surety agent

**CRIMINAL PROCEDURE - ATTORNEY GENERAL OPINIONS - PRECEDENT** - The Opinions of the Attorney General are useful to the Court of Appeals, but they are not binding precedent

### FACTS

Antonio Grant was indicted for armed robbery and possession of a firearm by a convicted felon. A-Absolute Bonds guaranteed Grant would appear at trial via an appearance bond for \$30,000. The company was owned and operated by Harold Newell, and Taluna Hunt was the agent who wrote the bond. Grant failed to appear, and the trial court issued a judgment nisi, a show cause order explaining the failure to appear, against Grant’s sureties Newell and Hunt. The trial court held the bond was forfeited and gave the duo ninety days to explain why the judgment “should not be made final.” The deputy sheriff only served Hunt with the judgment nisi. Newell swore under oath that he was not served personally. Neither appeared within the time frame; thus, the judgment became final. Newell later sought to set aside the judgment for improper service. The trial court found Hunt, his agent, had been served and ordered the final judgment against Newell and Hunt for \$30,000. When the amount was not paid, the court ordered the amount be taken out of Newell’s qualification bond filed at the Department of Insurance. The trial court also revoked the right of Newell and A-Absolute Bail Bonding “to act as surety on any further bail . . .” Newell paid the amount and attacked the judgment again. The trial court refused to set aside the judgment nisi but did set aside the revocation of the qualification bond and allowed Newell’s reinstatement. While reinstated, Newell continued to attack the judgment, asking for a determination that he was never properly served and for a refund of the forfeited \$30,000. In the end, no brief was filed on behalf of the State or any of its subdivisions. Newell appealed.

### ISSUES

Whether (1) service of process on the bail bondsman’s agent was sufficient and (2) the Opinions of the Attorney General allow for such service on a bail bondsman.

### HOLDING

(1) Because the Legislature affirmatively declared that sureties could not be served with process through an agent, the service of process on the bail bondsman’s agent was insufficient. (2) Because the relevant Attorney General’s Opinion was outdated and inapplicable due to a change in law in 2003, it did not apply to allow for such service on a bail bondsman. Therefore, the Court of Appeals reversed, rendered, and remanded the judgment of the Attala County Circuit Court.

**Reversed, Rendered, & Remanded - 2018-CA-01048-COA (July 23, 2019)**

Opinion by Judge McCarty

Hon. George M. Mitchell Jr. (Attala County Circuit Court)

Christopher Edward Smith for Appellant - Douglas Crosby for Appellee

Briefed by [Charles Ellzey](#)

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