

**MISSISSIPPI SUPREME COURT DECISIONS – MAY 30, 2019****SUPREME COURT - CIVIL CASES****SMITH PETROLEUM, INC. v. LAMAR CTY. SCH. DIST.****CIVIL - STATE BOARDS & AGENCIES**

**PROPERTY - PUBLIC LANDS - SIXTEENTH SECTION** - Miss. Code Ann. § 29-3-1(1) provides that the Board holds Sixteenth Section lands in trust for the benefit of public schools, and as such, the Board shall have control and jurisdiction of said school trust lands and all funds arising from any disposition; the Board is required to manage the school trust lands and all funds arising therefrom as trust property; and the Board shall assure that adequate compensation is received for all uses of the trust lands, except for uses by the public schools

**PROPERTY - LEASES & LICENSES - DISTINCTION** - The distinction between a lease and a license is the right of the possession of the land; if a contract confers exclusive possession of the premises or a portion thereof as against the whole world, including the owner, then it is a lease, but if it merely confers a privilege or permission to use or occupy under the owner, it is a license

**CONSTITUTIONAL LAW - EQUAL PROTECTION - ARBITRARY AND CAPRICIOUS** - A court will not find that an entity acted in an arbitrary and capricious manner when that entity acts in a consistent manner and makes its decision based upon safety concerns

**FACTS**

On January 6, 1992, the Lamar County Board of Education (the “Board”), N.B. Royals, and Kirk Frazier, as tenants in common, executed a Sixteenth Section Land Lease and contract for a term of forty years for a property on Old Highway 11 in Hattiesburg, Mississippi. After obtaining approval from the school district, Frazier and Royals assigned the property to Mississippi Oil, Inc. by quitclaim deed. Subsequently, Mississippi Oil merged with Smith Petroleum. Smith Petroleum then entered into a forty-year, exclusive agreement with Busby Outdoor, LLC. to erect and construct an advertising billboard depicted as an “LED Showcase Sign” on the leased property. Busby, on behalf of Smith Petroleum, sought a sign permit from the City of Hattiesburg, which was approved. During construction, the Board contacted Busby, asked that construction stop, and requested that Busby attend a Board meeting because the construction needed to be approved by the Board. The Lamar County School District (“the School District”) denied the request to erect and construct the LED advertising billboard on its Sixteenth Section leasehold, citing drivers’ safety and Smith Petroleum’s failure to seek Board approval before pursuing a permit from the City. Smith Petroleum filed its Notice of Appeal and Bill of Exceptions in the Chancery Court of Lamar County. The chancellor affirmed the School District’s denial of Smith Petroleum’s request, finding that the agreement between Smith Petroleum and Busby was a lease agreement, and therefore required Board approval as set forth in the original lease agreement in 1992. Smith Petroleum appealed.

**ISSUES**

Whether (1) the chancery court erred in finding that Smith Petroleum’s license agreement with Busby was a sublease that required Board approval; (2) the Board waived its argument that Smith Petroleum’s agreement with Busby was a sublease; and (3) the chancery court erred in finding that the Board’s decision was not arbitrary or capricious and did not deprive Smith Petroleum of its constitutional rights of equal protection.

**HOLDING**

(1) Because the agreement between Smith Petroleum and Busby attempted to give Busby an undivided interest in the specifically described Sixteenth Section land without prior approval from the Board, the trial court did not err in finding that the instrument was a sublease requiring Board approval. (2) Because even after receiving the agreement, the Board

maintained that the conveyance was a sublease, the Board did not waive its argument that the agreement was a sublease. (3) Because the Board's decision was consistent with its previous denials of such requests from Lamar Outdoor and Hendrick's Signs, the Board did not act in an arbitrary or capricious manner, and its decision did not deprive Smith Petroleum of its constitutional rights. Therefore, the Supreme Court affirmed the judgment of the Lamar County Chancery Court.

**Affirmed - 2018-CA-00325-SCT (May 30, 2019)**

Opinion by Chief Justice Randolph

Hon. Johnny Lee Williams (Lamar County Chancery Court)

Shirley M. Moore & Craig N. Orr for Appellant - William A. Whitehead Jr. & Richard D. Norton for Appellee

Briefed by [Natalie McCarty](#)

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## *SUPREME COURT – ORDERS*

### IN RE RULES GOVERNING ADMISSION TO THE MISS. BAR

#### ORDER

#### **ORDER**

The Supreme Court granted a petition to amend the rules governing admission to the Mississippi Bar. The amendments provided that an applicant who has unsuccessfully taken the Mississippi Bar Exam three times shall not be eligible for re-examination until successful completion of at least twelve additional semester hours of law school courses at an ABA accredited law school relevant to subjects covered by or skills necessary to the passage of the Mississippi Bar Exam. Satisfaction of this requirement shall permit the applicant to retake the Mississippi Bar Exam on one additional occasion. To be eligible for further re-examination, the applicant must comply with the requirements set forth in the amendments between each unsuccessful examination attempt. The Supreme Court ordered that these amendments apply to applications for and after the February 2020 Mississippi Bar Exam.

#### **OBJECTIONS**

Justice Coleman would have imposed a three-failure limit on the ability of candidates to take the Mississippi Bar Exam and would not allow such candidates to retake the exam after completing twelve more hours of law school classes. He opined that the court did not have any data or evidence before it to support the proposition that twelve additional law school hours would be beneficial for the candidates.

Justice Griffis agreed that after three unsuccessful attempts, an applicant should not be allowed to retake the exam without additional legal education. He disagreed with the court's decision to allow an unlimited number of re-examination attempts. Instead, he would adopt the rule that an applicant who has failed to pass three or more exams may be required to complete additional study prescribed by the Mississippi Board of Bar Admissions, or to establish that the reasons for previous failures no longer exist, before being permitted to take any subsequent exam, and that any applicant who has failed to pass the exam five times is not eligible to apply for further examination or admission.

**Granted - 89-R-99012-SCT (May 28, 2019)**

En Banc Order by Presiding Justice King - Objections by Justice Coleman & Justice Griffis

Briefed by [Luke Phillips](#)

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## *SUPREME COURT - CRIMINAL CASES*

### **KNIGHT V. STATE**

#### **CRIMINAL - FELONY**

**PROFESSIONAL RESPONSIBILITY - ATTORNEY-CLIENT RELATIONSHIP - LINDSEY BRIEF** - An attorney who believes that there are no arguable issues supporting a client's appeal must file a brief with the Court under Miss. R. App. P. 28, demonstrating that the attorney has reached this conclusion after thoroughly scouring the record for arguable issues

**APPELLATE PROCEDURE - LINDSEY BRIEF - REQUIREMENTS** - An attorney filing a *Lindsey* brief must specifically address all of the following: 1) the reason for and circumstances of the arrest; 2) possible violations of right to counsel; 3) the entire trial transcript; 4) all rulings of the trial court; 5) possible prosecutorial misconduct; 6) all jury instructions; 7) all exhibits, whether entered into evidence or not; and 8) possible misapplication of the law in sentencing

#### **FACTS**

Larry Knight was convicted of one count of molestation and sentenced to serve fifteen years for molesting the underage daughter of his then-girlfriend, Lisa Cartlidge. Knight appealed. In compliance with Miss. R. App. P. 28, Knight's attorneys filed a *Lindsey* brief stating that, after sufficient overview, they could find no appealable issue. However, they informed Knight that he had the right to file a pro se appellate brief, and on November 20, 2018, the Supreme Court entered an order giving Knight forty days to file such a brief. On February 4, 2019, Knight moved for additional time to file the brief and was granted forty additional days. Knight failed to file a pro se brief within the forty days. Knight appealed.

#### **ISSUE**

Whether the record contains any appealable issue.

#### **HOLDING**

Because the court independently reviewed the record and found no arguable issue that required supplemental briefing or additional review, there was no appealable issue. Therefore, the Supreme Court affirmed the judgment of the Sharkey County Circuit Court.

**Affirmed - 2018-KA-00656-SCT (May 30, 2019)**

Opinion by Justice Griffis

Hon. Isadore W. Patrick, Jr. (Sharkey County Circuit Court)

George T. Holmes & Phillip W. Broadhead (Pub. Def. Office) for Appellant - Abbie Eason Koonce & Richard Earl Smith Jr. (Att'y Gen. Office) for Appellee

Briefed by [Jon-Paul Bushnell](#)

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### **MOORE V. STATE**

#### **CRIMINAL - FELONY**

**CRIMINAL LAW - RIGHT TO REMAIN SILENT - WAIVER** - Waiver of the constitutional rights to remain silent and to counsel must be voluntary, knowing and intelligent

**CRIMINAL LAW - INEFFECTIVE ASSISTANCE OF COUNSEL - DIRECT APPEALS** - On direct appeal, the court will rule on the merits of an ineffective assistance of counsel claim where (1) the record affirmatively shows ineffectiveness of constitutional dimensions, or (2) the parties stipulate that the record is adequate to allow the appellate court to make the finding without consideration of the findings of fact of the trial judge

**CRIMINAL LAW - CAPITAL MURDER - SENTENCING** - Upon conviction or adjudication of guilt of a defendant of capital murder or other capital offense, the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death

### **FACTS**

Gerome Moore was convicted of capital murder when Carolyn Temple was killed during the commission of a robbery. Moore, Antreal Jones and Antwain Dukes all planned to commit a robbery, when they followed Temple home from the store. Moore was the driver while Jones and Dukes robbed Temple and shot her because she resisted giving up her purse. Temple would describe her attackers as two black males driving a maroon Impala before she died. Through the investigation, Moore became a person of interest and was interrogated by police. Moore was read his *Miranda* rights, but when asked whether or not he waived his right to remain silent, he gave several potentially ambiguous statements. Moore signed the waiver and confessed to the planning and execution of the robbery. At trial, Moore moved to suppress the interview with law enforcement, which was denied. A Hinds County jury convicted Moore, and the judge sentenced him to life imprisonment without the possibility of parole. Moore appealed.

### **ISSUES**

Whether (1) the trial court erred in denying Moore's motion to suppress; (2) Moore's counsel was ineffective; (3) Moore had a statutory right to be sentenced by a jury; and (4) the trial court erred in denying Moore's motion for funds.

### **HOLDING**

(1) Because the State proved that Moore's statements were given voluntarily, knowingly, and intelligently, and because there was no plain error on the issues of waiver and the right to remain silent, there was no error in denying the motion to suppress. (2) Because the record does not affirmatively show ineffectiveness of constitutional dimensions, and because the record is inadequate to allow a necessary finding, the court denied Moore's claim of ineffective assistance of counsel. (3) Because the reading of Miss. Code Ann. § 99-19-101 is unambiguous as to its meaning, the circuit court erred in denying Moore's request to have a jury sentence him. (4) Because an expert is not required in a *Miller* hearing, the trial court did not abuse its discretion in denying Moore's motion for funds. Therefore, the Supreme Court affirmed in part and vacated and remanded in part the judgment of the Hinds County Circuit Court.

### **DISSENT**

Justice King argued that it was plain error to admit Moore's statement to police into evidence due to the fact that he had invoked his right to remain silent. Justice King emphatically stated that Moore's actions were unambiguous and unequivocal signals that he had invoked his right. Moore initially indicated he did not want to speak to the officers and shook his head in the negative when asked to answer questions. Moore's invocation of his right to remain silence was further evidenced by the fact that different detectives were sent in after other detectives failed to get Moore to talk. Therefore, Justice King argued that because Moore invoked his 5<sup>th</sup> Amendment right to remain silent, his statements should have been inadmissible against him. He would reverse Moore's conviction and remand the case for a new trial.

**Affirmed in Part; Vacated & Remanded in Part - 2017-KA-00379-SCT (May 30, 2019)**

En Banc Opinion by Justice Chamberlin - Dissent by Presiding Justice King

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

Jacob W. Howard, Phillip W. Broadhead & George T. Holmes (Pub. Def. Office) for Appellant - Joe Hemleben & Katy Taylor

Gerber (Att'y Gen. Office) for Appellee

Briefed by [Brandon H. Wilson](#)

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**MISSISSIPPI COURT OF APPEALS DECISIONS – MAY 28, 2019**

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

## HOLLOWAY V. STATE

### CIVIL - POST-CONVICTION RELIEF

**CRIMINAL PROCEDURE - RIGHT TO SPEEDY TRIAL - VOLUNTARY PLEA** - Where a defendant voluntarily pleads guilty to an offense, he waives nonjurisdictional rights incident to trial, including the constitutional right to a speedy trial

**CRIMINAL PROCEDURE - INDICTMENT - AMENDMENT** - All indictments may be amended as to form but not as to the substance of the offense charged, and an amendment shall be allowed only if the defendant is afforded a fair opportunity to present a defense and is not unfairly surprised

**POST-CONVICTION RELIEF - INNEFFECTIVE ASSISTANCE OF COUNSEL - BURDEN OF PROOF** - In order to prevail on an ineffective-assistance-of-counsel claim, a defendant must prove that his attorney's performance was deficient and that the deficiency was so substantial as to deprive the defendant of a fair trial

### FACTS

In July 2015, Jason Rickey Holloway pleaded guilty to strong armed robbery under Miss. Code Ann. § 97-3-73 and was sentenced as a non-violent offender under Miss. Code Ann. § 99-19-81 to fifteen years in custody. During the trial, the prosecution's motion to amend Holloway's indictment to indict Holloway as a non-violent habitual offender was granted. In September 2015, Holloway filed his first PCR motion, alleging that he was denied his right to a speedy trial, his indictment was improper, his lawyer was ineffective, and his plea was involuntary. In June 2016, the trial court summarily denied Holloway's PCR motion. In July 2016, Holloway filed an out-of-time appeal in which he called for a "motion to proceed to the appeal court," but the motion was never addressed or forwarded to the Mississippi Clerk of Appellate Courts. In March 2018, the Court of Appeals granted Holloway's out-of-time appeal from the denial of his PCR motion, finding that Holloway had filed the equivalent of a timely notice of appeal.

### ISSUES

Whether the trial court erred in (1) denying Holloway the Sixth Amendment right to a speedy trial; (2) indicting Holloway under an improperly amended indictment; and (3) denying Holloway effective assistance of counsel, resulting in an involuntary plea.

### HOLDING

(1) Because Holloway voluntarily pled guilty to an offense and thus Holloway waived nonjurisdictional rights incident to trial, including the right to a speedy trial, the trial court did not err in denying Holloway's claim that he was denied his Sixth Amendment right to a speedy trial. (2) Because Holloway did not object to the amendment of his indictment at his plea hearing, and because the amendment did not materially alter the facts underlying the indictment and did not prejudice him, the trial court did not err in denying Holloway's claim that the amendment to his indictment was improper. (3) Because Holloway was informed of the nature of the charges against him, the consequences of his plea, his status as a non-violent habitual offender, and because he understood the State's recommendation, the trial court did not err in denying Holloway's claim that he was denied effective assistance of counsel, resulting in an involuntary plea. Therefore, the Court of Appeals affirmed the judgment of the Alcorn County Circuit Court.

### **Affirmed - 2017-CP-01037-COA (May 28, 2019)**

Opinion by Judge Westbrook

Hon. Thomas J. Gardner III (Alcorn County Circuit Court)

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

Briefed by [Carson Phillips](#)

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## JACKSON V. BALDWIN SAND & GRAVEL

## CIVIL - REAL PROPERTY

**CIVIL PROCEDURE - MOTION TO RECONSIDER - STANDARD** - In a motion pursuant to Miss. R. Civ. P. 60, a reviewing court is limited to whether the trial court abused its discretion in denying the motion, and the motion should be denied where it is merely an attempt to relitigate the case

**APPELLATE PROCEDURE - MOTION TO RECONSIDER - SCOPE OF REVIEW** - The appeal from a denial of a Rule 60(b) motion brings up for review only the order of denial itself and not the underlying judgment

**CIVIL PROCEDURE - MOTION PRACTICE - FINAL JUDGMENT** - The Mississippi Rules of Civil Procedure provide two avenues to attack a final judgment: (1) file a motion for a new trial or to alter or amend the judgment under Miss. R. Civ. P. 59, or (2) file a motion for relief from the final judgment under Miss. R. Civ. P. 60

### FACTS

A land dispute with the heirs of Queen M. Jackson Lewis led Baldwin Sand & Gravel, a division of W.G. Yates & Sons, and Jerry Steen Jr. to file actions against the Jacksons to quiet and confirm title to certain land located in Carroll County, Mississippi. The chancery court partially ruled in favor of all three parties and entered a final judgment on February 3, 2014. On February 18, 2014, the Jacksons filed a motion under Miss. R. Civ. P. 59(e) to alter or amend the judgment. The court ruled the motion untimely and without merit and noted that even if the motion sought relief under Miss. R. Civ. P. 60(b), it was without merit. In the Jacksons' 2014 appeal of the final judgment and the order denying the Rule 59(e) motion, the Supreme Court granted Baldwin's motion to dismiss and stated that the Rule 59(e) motion was untimely and did not toll the time for filing a notice of appeal. The Jacksons' motion to reconsider was also denied. In March 2017, the Jacksons filed a motion for clarification in the chancery court claiming that the 2014 order denying their Rule 59(e) motion was not clear. The chancery court denied the motion, noting that it was framed as a Rule 60(b) motion and was an attempt to relitigate the issue. Jackson appealed.

### ISSUE

Whether the chancery court erred in denying the Jackson's Rule 60(b) motion for clarification of the court order denying their Rule 59(e) motion to alter or amend the judgment quieting and confirming title in certain land in Carroll County, Mississippi.

### HOLDING

(1) Because the motion for clarification is merely a Rule 60(b) motion attacking the final judgment, and because the chancery court already determined there was no merit to Jackson's Rule 59(e) motion under a Rule 60(b) theory that the presence of exceptional circumstances called for relief from the final judgment, the chancery court did not err in denying the Jacksons' Rule 60(b) motion for clarification. Therefore, the Court of Appeals affirmed the judgment of the Carroll County Chancery Court.

#### **Affirmed - 2017-CA-01261-COA (May 28, 2019)**

Opinion by Judge McCarty

Hon. Joseph Kilgore (Carroll County Chancery Court, Second Judicial Dist.)

*Pro se* for Appellant - G. Todd Burwell, Sam N. Fonda, & Emily Kincses Lindsay for Appellees

Briefed by [Tucker Hood](#)

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## ROBERTS V. STATE

### CIVIL - OTHER

**CIVIL - APPEALS - NEW ISSUES** - An appellate court will not review matters on appeal that were not raised at the trial court level

**CRIMINAL - SEXUAL CRIMES - MISS. SEX OFFENDERS REGISTRATION LAW** - Under Miss. Code Ann. § 45-33-25(1)(a), "[a]ny person having a permanent or temporary residence in this state or who is employed or

attending school in this state who has been convicted of a registrable offense in this state . . . [is required to] register with the responsible agency and the Mississippi Department of Public Safety”

### **FACTS**

Duane Roberts was convicted by jury trial in 1985 for sexual battery of a minor. After losing on appeal, Roberts served five years of his twelve-year prison sentence, released early for good behavior. In March 2006, the State informed Roberts he would have to register a sex offender for the 1985 conviction. In July 2017, Roberts petitioned the trial court for relief from his duty to register as a sex offender. The trial court denied his petition. Roberts appealed.

### **ISSUES**

Whether (1) the State had a duty to inform Roberts of his obligation to register as a sex offender and failed that duty and (2) the doctrine of laches estopped the State from imposing on him the duty to register as a sex offender.

### **HOLDING**

(1) Because Roberts did not raise the issue of the State’s duty to inform him at the trial court level, the Court of Appeals was procedurally barred from considering the issue on appeal. (2) Because Roberts did not raise the issue of the doctrine of laches for the trial court, the Court of Appeals was procedurally barred from considering the issue on appeal. Therefore, the trial court’s dismissal of the petition is affirmed.

**Affirmed - 2018-CA-00212-COA (May 28, 2019)**

Opinion by Judge Wilson

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

Joe S. Deaton III & Matthew E. Rutherford for Appellant - Lora E. Hunter & Anthony L. Schmidt Jr. for Appellee

Briefed by [Michael Lambert](#)

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## **SCHIMPF V. HARDY**

### **CIVIL - DOMESTIC RELATIONS**

**FAMILY LAW - CHILD SUPPORT - PURPOSE** - Child support is awarded to the custodial parent for the benefit of the child, the underlying principal being the legal duty owed to the child for the child’s maintenance and best interest  
**FAMILY LAW - CHILD SUPPORT - FIDUCIARY DUTY** - Child support benefits belong to the child, not the custodial parent, and the custodial parent has a fiduciary duty to hold them for the use of the child

**FAMILY LAW - CHILD SUPPORT - UNJUST ENRICHMENT** - Where a noncustodial parent, who remains subject to an existing child support order, takes de facto custody of the parties’ child and then asserts that the custodial parent has been unjustly enriched by support for a child the custodial parent did not actually support, equity may require crediting the noncustodial parent for the support payments he or she still made to the custodial parent or directly to the child during this time

### **FACTS**

When James Walter Schimpf Jr. and Karin Schimpf Hardy divorced in 2006, Hardy received primary physical custody of their two children, and Schimpf was ordered to pay \$3,000 a month in child support and one-half of the children’s medical and extracurricular-activity expenses. In 2015, Schimpf filed a Petition to Modify Custody, Visitation, and Child Support and for Contempt and Other Relief. In August 2016, the chancellor entered an interim order awarding Schimpf temporary care and custody of the children but ordering him to begin placing each month’s child-support payment in his attorney’s trust account. In May 2017, the chancellor entered a final judgment holding Schimpf in contempt for failure to reimburse Hardy for one-half of the children’s past-due medical and extracurricular-activity expenses but awarded Schimpf sole physical custody subject to Hardy’s visitation. However, the chancellor did not return to Schimpf the child support he had paid into his attorney’s trust account during the nine months he had temporary custody, but

instead directed that all child support held in trust accounts to be disbursed to Hardy. The chancellor denied Schimpf's post-trial motion for clarification or reconsideration and Hardy's post-trial motion for a new trial. Schimpf appealed.

### ISSUE

Whether the chancellor erred by not giving Schimpf credit for child support payments made during the nine months he had temporary physical custody of the children.

### HOLDING

Because Hardy was unjustly enriched by child support payments for children she did not actually support, the chancellor erred by not crediting Schimpf for the child support payments he made while the children were temporarily in his sole physical custody pursuant to the chancellor's interim order. Thus, Hardy was entitled to the money held in the trust. Therefore, the Court of Appeals affirmed in part and reversed and rendered in part the judgment of the Madison County Chancery Court.

**Affirmed in Part; Reversed & Rendered in Part - 2017-CA-01499-COA (May 28, 2019)**

Opinion by Judge Tindall

Hon. Cynthia L. Brewer (Madison County Chancery Court)

Mark A. Chinn for Appellant - Heather Marie Aby for Appellee

Briefed by [Baxter Geddie](#)

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## SMITH V. SIMS

### CIVIL - REAL PROPERTY

**PROPERTY - ADVERSE POSSESSION - ELEMENTS** - In order to establish a claim of adverse possession, a claimant must prove by clear and convincing evidence that the possession was (1) under claim of ownership; (2) actual or hostile; (3) open, notorious, and visible; (4) continuous and uninterrupted for a period of ten years; (5) exclusive; and (6) peaceful

**CIVIL PROCEDURE - COLLATERAL ESTOPPEL – ELEMENTS** - Pursuant to *Gibson*, collateral estoppel precludes a party from relitigating a specific issue which was: (1) actually litigated in the former action; (2) determined by the former action; and (3) essential to the judgment in the former action”

**PROPERTY - ABANDONMENT - TITLE OWNERSHIP** - Pursuant to *Moore*, if a public road is abandoned, title reverts to the adjacent landowners to the center line of the abandoned road

### FACTS

On June 21, 2016, Jerry and Debbie Smith filed a complaint for a declaratory judgment and for adverse possession pertaining to a seventeen-foot strip of land referred to as “Old Pickens Road.” The Smiths named Patrick Sims and the Jasper County Board of Supervisors (“Jasper County”) as defendants. The Jasper County Chancery Court held that Old Pickens Road was a public road and that it had not been abandoned by Jasper County. The Smiths did not appeal the court's final judgment. However, on October 12, 2017, the Smiths sued Sims again. In this case, the Smiths sought to quiet title to Old Pickens Road based upon a June 2017 quitclaim deed transferred to them from the purported owner of the property, Joseph Waites. In the alternative, the Smiths claimed rights to the property under the doctrine of adverse possession. The chancery court granted Sims's Rule 12(b)(6) motion to dismiss, finding that (1) the Smiths' adverse possession claim was barred by the doctrine of collateral estoppel, among other equitable theories; (2) the Smiths' quiet title claim was barred by the doctrines of res judicata and judicial estoppel; and (3) the Smiths were entitled to no relief under any set of facts that could be proven in support of their claims. The Smiths appealed.

### ISSUES

Whether the chancery court erred by (1) granting Sims's 12(b)(6) motion in respect to the adverse possession claim and (2) by failing to give the Smiths ownership of the subject property through the Waites quitclaim deed.



## **HOLDING**

(1) Because adverse possession cannot run against the state or its subdivision, such as Jasper County, the adverse possession claim was without merit. (2) Because the Smiths were not entitled to any relief under the set of facts that could have been proven in support of their quiet title claim, the Smiths' assertions were without merit.

**Affirmed - 2018-CA-00407-COA (May 28, 2019)**

Opinion by Presiding Judge Carlton

Hon. H. David Clark II (Jasper County Circuit Court)

Robert Wendell James for Appellants - Rance N. Ulmer for Appellee

Briefed by [Whitney Jackson](#)

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

### **WOOTEN V. STATE**

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

**POST- CONVICTION RELIEF - GUILTY PLEA - REVOCATION** - A defendant who enters a plea of guilty has three years after the entry of the judgment of conviction to seek relief

**POST-CONVICTION RELIEF - REVOCATION - BURDEN OF PROOF** - Revocation requires only a showing that the defendant more likely than not violated the terms of his post-release supervision

#### **FACTS**

In January 2006, Larry Wooten pled guilty to possession of cocaine and was subsequently sentenced to serve eight years in the custody of the Mississippi Department of Corrections ("MDOC"). The court ordered Wooten to serve three years with MDOC and then he would be placed on post-release supervision. Wooten violated the terms of his post-release supervision on multiple occasions, and the circuit court revoked Wooten's suspended sentence. Wooten filed a motion for post-conviction relief, which the circuit court denied. Wooten appealed.

#### **ISSUES**

Whether (1) the circuit court correctly determined that Wooten's claim for post-conviction relief was time-barred; (2) Wooten's sentence was illegally revoked; and (3) Wooten's sentence has expired by the time his post-release supervision was revoked.

#### **HOLDING**

(1) Because both Wooten's conviction and his post-release supervision revocation occurred more than three years before his claim for post-conviction relief was entered, the circuit court was correct in determining that Wooten's claim was time-barred. (2) Because Wooten pled guilty to offenses that were violations of his post-release supervision, the standard for revocation was met at hearing, and Wooten's sentence was legally revoked. (3) Because the record indicates that Wooten merely misunderstood the terms of his sentence, and because he had violated the terms of the circuit court's order during his three-year post-release supervision, his sentence had not expired. Therefore, the Court of Appeals affirmed the judgment of the Rankin County Circuit Court.

**Affirmed - 2018-CP-00378-COA (May 28, 2019)**

Opinion by Judge Lawrence

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

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

Briefed by [Jack Schultz](#)

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## COURT OF APPEALS - CRIMINAL CASES

### JOHNSON V. STATE

#### CRIMINAL - FELONY

**VOIR DIRE - PEREMPTORY STRIKES - BATSON CHALLENGE** - Under *Batson*, first, the defendant must establish a prima facie case of discrimination in the selection of jury members. The prosecution then has the burden of stating a racially neutral reason for the challenged strike. If the State gives a racially neutral explanation, the defendant can rebut the explanation. Finally, the trial court must make a factual finding to determine if the prosecution engaged in purposeful discrimination. If the defendant fails to rebut, the trial judge must base his decision on the reasons given by the State

**MIRANDA RIGHTS - RIGHT TO REMAIN SILENT - WAIVER** - The right to remain silent does not apply when the defendant does not invoke the right to silence and makes voluntary statements

#### FACTS

In 2013, Rodney Johnson moved into a home with a woman named Ellen and her four daughters. One of Ellen's daughters, age thirteen, alleged that Johnson raped her on several occasions during a ten-month span. Upon disclosing the incidents of rape to her mother, Ellen confronted Johnson, who then denied the abuse. Ellen took her daughter for a physical examination and pressed charges against Johnson. An examination of the daughter's bedding revealed protein-based stains that matched a sample of Johnson's sperm. While being investigated, Johnson was read his *Miranda* rights on two separate occasions but chose to cooperate with the investigators and offer his account of the events. During voir dire, the State used all six of its peremptory strikes against African-American potential jurors and proffered race-neutral reasons for excluding the potential jurors. At trial, the jury found Johnson guilty of two counts of statutory rape and one count of forcible rape. Johnson appealed.

#### ISSUES

Whether (1) the trial court erred in accepting the State's proffered nondiscriminatory reasons for striking six potential jurors; (2) the State violated Johnson's right to remain silent; and (3) Johnson's defense was impaired due to ineffective assistance of counsel.

#### HOLDING

(1) Because the State provided race-neutral reasons for striking certain African-American jurors, and because the court found that the State's explanations were reasonable and race neutral, the trial court reached an appropriate *Batson* determination. (2) Because Johnson spoke with investigators after being read his *Miranda* rights, thus, waiving his right to remain silent, there was no reversible error on this basis. (3) Because, under precedent, ineffective assistance of counsel claims are more appropriately raised during PCR proceedings, the court declined to address the issue but gave instruction that Johnson may reserve the right to assert that his defense was impaired due to ineffective assistance of counsel in a future post-conviction relief motion. Accordingly, the Lauderdale County Circuit Court's judgment was affirmed.

#### CONCURRENCES

Judge Westbrook agreed that the Johnson's conviction must be affirmed but explained why affirmance was necessary. The State, in exercising its preemptory strike, violated "the spirit of *Batson*." Meaning, *Batson* was intended to prohibit not just race-based discrimination—but "group based traits" discrimination. Although

*Batson* has not been extended to include discrimination based on age, Judge Westbrook found that the State's deliberate use of preemptory challenges against potential jurors under the age of twenty-five violated *Batson*. Further, Judge Lawrence, in a separate special concurrence, expressed concern with age-based discrimination.

**Affirmed - 2017-KA-01722-COA (May 28, 2019)**

En Banc Opinion by Judge Tindell

Hon. Charles W. Wright Jr. (Lauderdale County Circuit Court)

Justin Taylor Cook (Pub. Def. Office) for Appellant – Barbara Wakeland Byrd (Att'y Gen. Office) for Appellee

Briefed by [Drey Russell](#)

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## JONES V. STATE

### CRIMINAL - FELONY

**APPEALS - INEFFECTIVE ASSISTANCE OF COUNSEL - DISCRETION** - An appellate court may decline to rule on the issue of ineffective assistance of counsel in a direct criminal appeal even when both parties stipulate that the record is adequate to allow the appellate court to make the finding without consideration for the findings of fact of the trial judge

#### **FACTS**

Darius Earl Jones was indicted and convicted of possession of at least 250 grams, but less than 500 grams of a Schedule I controlled substance. Jones claimed that he found the drugs while working but never actually possessed the drugs. At trial, Mika Beatty was called as a rebuttal witness who reiterated that when she picked up Jones's jacket, the drugs fell out the sleeve. Additionally, evidence of Jones's prior conviction for the sale of hydrocodone was brought up on cross-examination. Jones appealed.

#### **ISSUES**

Whether (1) the evidence was sufficient to support a conviction; (2) the verdict was against the overwhelming weight of the evidence; (3) the trial court committed error in admitting the prior conviction evidence without a *Peterson* hearing; and (4) the assistance of counsel was ineffective.

#### **HOLDING**

(1) Because, in the light most favorable to the State, the court found there was sufficient evidence to sustain a conviction, the issue was without merit. (2) Because Jones only cited the factual disputes between the key State witness and himself, and because any factual conflicts are for the jury to resolve and do not mandate a new trial, the court declined to order a new trial. (3) Because the evidence was initially brought up during direct examination and there was no contemporaneous objection made during the cross examination, the issue is procedurally barred, the error was harmless, and the circuit court did not abuse its broad discretion of admitting testimony. (4) Because ineffective assistance of counsel is typically an issue for post-conviction relief, the court declined to rule despite both parties stipulating to an adequate record for the appellate court to make a finding. Therefore, the Court of Appeals affirmed the judgment of the Scott County Circuit Court.

**Affirmed - 2017-KA-01736-COA (May 28, 2019)**

Opinion by Judge Wilson

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

Mark A. Cliett for Appellant - Katy T. Gerber & Jason Davis (Att'y Gen. Office) for Appellee

Briefed by [James Adamoli](#)

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## SMITH V. STATE

### CRIMINAL - FELONY

**CRIMINAL LAW - DEADLY WEAPON - EVIDENCE** - The State is not required to prove that a jail is government property housing inmates in order to show that a person or inmate unlawfully possessed a cell phone in jail

**POST-CONVICTION RELIEF - COUNSEL - EFFECTIVENESS** - Where the record cannot support an ineffective assistance of counsel claim, the defendant's claim may be preserved through a post-conviction relief petition

#### FACTS

Rashad Smith turned himself into the Lincoln County Jail because his twin brother had been mistakenly arrested instead of Rashad. During the booking process, an officer discovered Smith possessed marijuana and a cell phone. A jury found Smith guilty of possession of a cell phone in a correctional facility, and the Lincoln County Circuit Court sentenced him to fifteen years as a habitual offender in the custody of the Mississippi Department of Corrections. Smith appealed.

#### ISSUES

Whether (1) Smith's conviction should be reversed and rendered because the State's evidence was insufficient for a conviction under the indictment as drafted and (2) he received ineffective assistance of counsel because the indictment in this case was never properly amended to authorize sentencing as a habitual offender and his counsel failed to object, thereby waiving this issue for appellate review.

#### HOLDING

(1) Because the statute plainly prohibits possession of a phone in jail by a person or inmate, the State was not required to prove the other unnecessary statutory elements that the jail belonged to Lincoln County, that it was occupied or used by offenders, and that Smith was an inmate housed there, and thus, the evidence was sufficient. (2) Because the record did not support an ineffective assistance of counsel claim and the defendant's right to argue the same through a post-conviction relief petition was preserved, Smith's ineffective assistance claim was denied without prejudice. Therefore, the Court of Appeals affirmed the judgment of the Lincoln County Circuit Court.

#### PARTIAL CONCURRENCE/DISSENT

Judge McCarty concurred with respect to the majority opinion on the sufficiency of the evidence and the indictment. Judge McCarty dissented in part explaining that the ineffective assistance of counsel issue does not require further exploration in the post-conviction process because the defendant was put on notice of his habitual offender status.

#### **Affirmed - 2017-KA-01494-COA (May 28, 2019)**

Opinion by Presiding Judge Carlton – Partial Concurrence/Dissent by Judge McCarty

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

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

Briefed by [Karen Lott](#)

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