

MISSISSIPPI SUPREME COURT DECISIONS – FEBRUARY 28, 2019***SUPREME COURT - CIVIL CASES*****F & S SAND, INC. V. STRINGFELLOW****CIVIL - PERSONAL INJURY**

PERSONAL INJURY - LATENT INJURY - ACCRUAL - A plaintiff's cause of action for a latent injury or disease accrues at the point at which he discovered, or by reasonable diligence should have discovered the injury

PERSONAL INJURY - STATUTE OF LIMITATIONS - INJURY DISCOVERY - The three-year statute of limitations under the discovery rule begins when the worker seeks treatment for the issue, and not the date of diagnosis

FACTS

Ted Stringfellow worked as a sandblaster throughout the southeast. In 2007, Stringfellow sought medical attention for a cough, and doctors noted his history as a construction worker. In 2008, Stringfellow also sought medical treatment for pulmonary-related complications and was directed to follow up with a pulmonologist. Stringfellow was diagnosed with silicosis in 2014 and filed a complaint against the defendants in 2016. The defendants sought summary judgment arguing that Stringfellow's complaint was filed after the three-year statute of limitations had run. The trial court denied summary judgment, and defendants petitioned for an interlocutory appeal.

ISSUES

Whether (1) venue in Jefferson County was proper and (2) the claim was time-barred by the statute of limitations.

HOLDING

(1) Because plaintiff's claims were time-barred by the statute of limitations, the issue of venue was moot. (2) Because there was no question of fact over when the plaintiff discovered his injury and discovery was not within the statute of limitations, the claim was time-barred by the statute of limitations. Therefore, the Supreme Court reversed the Jefferson County Circuit Court's denial of summary judgment and rendered judgment in favor of defendants.

DISSENTS

Justice Kitchens dissented arguing that the issue of when the plaintiff knew or should have known of an injury for the purposes of the discovery rule is a fact question for the jury. Justice Coleman also dissented arguing that when doubt exists about whether summary judgment should be granted, it should be denied in order to preserve the plaintiff's right to have a jury consider his claims.

Reversed and Rendered – 2017-IA-00962-SCT (Consolidated with 2017-IA-009630SCT, 2017-IA-01049-SCT, 2017-IA-01059-SCT, & 2017-IA-01061-SCT) (Feb. 28, 2019)

Opinion by Justice Beam - Dissents by Justices Kitchens and Coleman

Hon. Lamar Pickard (Jefferson County Circuit Court)

Randi Peresich Mueller, Joseph George Baladi, Jennifer Jones Skipper, Silas W. McCharen, John D. Cosmich, Lakeysha Greer Isaac, Mark Johnson Goldberg, Ronald G. Peresich, W. Mark Edwards, Johanna Malbrough McMullan, Jennifer Moran Young, J. Collins Wohner Jr., Walter T. Johnson, Corey Donald Hinshaw, M. Christine Crockett White, Sandra Denise Buchanan, Thomas Ray Julian & Michael D. Simmons for Appellants – David Neil McCarty, John Timothy Givens, Timothy W. Porter, Patrick Malouf & Robert Allen Smith Jr. for Appellees

Briefed by [Karen Lott](#)

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MISSISSIPPI BAR V. THOMAS

CIVIL - BAR MATTERS

BAR MATTERS - DISCIPLINE - RECIPROCITY - Under Rule 13 of the Rules of Discipline for the Mississippi State Bar, disciplinary sanctions against an attorney in another state shall be grounds for reciprocal disciplinary action in Mississippi; in applying reciprocal discipline, the Supreme Court has generally mirrored the sanction imposed in the sister state, absent extraordinary circumstances

BAR MATTERS - DISCIPLINE - RECIPROCITY - The Court considers the following nine criteria when determining reciprocal discipline: (1) the nature of the misconduct involved; (2) the need to deter similar misconduct; (3) the preservation of the dignity and reputation of the profession; (4) protection of the public; (5) the sanctions imposed in similar cases; (6) the duty violated; (7) the lawyer's mental state; (8) the actual or potential injury resulting from the misconduct; and (9) the existence of aggravating and/or mitigating factors

FACTS

While representing a BP-Gulf-oil-spill client in the United States District Court for the Eastern District of Louisiana, John R. Thomas, in the course of advising the client to accept a settlement, made certain derogatory comments and expressed his opinion of possible corruption of the Multi-District Litigation judge and the Plaintiff's Steering Committee. On February 16, 2018, Thomas was sentenced to a limited two-year suspension in the federal district court for the Eastern District of Louisiana. In accordance with Rule 13 of the Rules of Discipline for the Mississippi State Bar, the Mississippi Bar filed a formal complaint against Thomas, who is licensed to practice in Mississippi, seeking reciprocal discipline. Bar discipline is a matter of original jurisdiction for the Supreme Court.

ISSUES

Whether (1) the Supreme Court may impose reciprocal discipline upon Thomas in the state of Mississippi for his two-year suspension from the Louisiana federal district court and (2) the discipline imposed by the Supreme Court should be less than, equal to, or greater than the discipline imposed by the Louisiana federal district court.

HOLDING

(1) Because Rule 13 of the Rules of Discipline for the Mississippi State Bar states that when an attorney is subjected to disciplinary sanctions in another state, such sanctions shall be grounds for disciplinary action in Mississippi, and because Thomas was subjected to disciplinary sanctions in the Louisiana federal district court, the Supreme Court may impose reciprocal discipline upon Thomas. (2) Because the Supreme Court's application of the reciprocal discipline has generally mirrored the sanction imposed in the sister state, absent extraordinary circumstances which compel, justify or support variance from the foreign jurisdiction's sanction, and because the Louisiana federal district court implicitly or explicitly used all of the criteria utilized by the Supreme Court to determine an appropriate sanction, the discipline imposed by the Supreme Court was equal to the discipline imposed by the Louisiana federal district court. Therefore, the Supreme Court granted relief to the Mississippi Bar and imposed a two-year suspension, retroactively beginning February 16, 2018, along with all court costs upon Thomas.

Relief Granted - No. 2018-BD-01383-SCT (Feb. 28, 2018)

En Banc Opinion by Chief Justice Randolph

Pro se for Respondent - James Russell Clark for Complainant

Briefed by [Jon-Paul Bushnell](#)

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SUPREME COURT – ORDERS

MISSISSIPPI BAR V. PLUNKETT

ORDER OF DISBARMENT

RULES OF DISCIPLINE - EMBEZZLEMENT - SUMMARY DISBARMENT - Under Rule 6 of the Rules of Discipline for the Mississippi Bar, conviction of the crime of embezzlement is cause for summary disbarment

RULES OF DISCIPLINE - DISBARMENT - COSTS AND EXPENSES - Under Rule 27(a) of the Rules of Discipline for the Mississippi Bar, a Tribunal or the Court may assess costs incurred in the investigation, prosecution and defense of any disciplinary matter as justice may require, and such costs and expenses shall include the actual and reasonably necessary expenses of the Bar, excluding Complaint Counsel's time

ORDER

Sharon G. Plunkett, a member of the Mississippi Bar, pled guilty to and was convicted of felony embezzlement of \$5,000 to \$25,000, which is a crime punishable by summary disbarment. The Bar requested Plunkett's disbarment, and Plunkett conceded that the Bar should be granted the relief requested. Therefore, the Supreme Court ordered Plunkett's disbarment and assigned her all costs of the proceeding.

2018-BD-01382-SCT (Feb. 28, 2019)

En Banc order by Justice Maxwell

Briefed by [Drey Russell](#)

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SUPREME COURT - CRIMINAL CASES

SHARKEY V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - MISTRIAL - JUDICIAL DISCRETION - Pursuant to *McNeal*, the Court will not order a new trial unless it is convinced that the verdict so contradicts the overwhelming weight of the evidence that to allow the verdict to stand would sanction an unconscionable injustice

CRIMINAL PROCEDURE - JURY INSTRUCTIONS - THEORY OF CASE - A defendant is entitled to have jury instructions given which present his theory of the case; however, this entitlement is limited in that the court may refuse an instruction which incorrectly states the law, is covered fairly elsewhere in another instruction, or is without foundation in the evidence

CRIMINAL PROCEDURE - JURY INSTRUCTIONS - LESSER-INCLUDED OFFENSE - To be entitled to a lesser-included offense instruction, the defendant must point to evidence in the record from which a jury could reasonably find him not guilty of the crime with which he was charged and at the same time find him guilty of the lesser-included offense

FACTS

Eric Sharkey, Madison Magee, and Marvin Bolden were indicted on two counts of armed robbery and possession of a firearm by a convicted felon. The State moved to amend Sharkey's indictment to reflect his status as a habitual offender. The trial court found Sharkey to be a habitual offender under Miss. Code Ann. § 99-19-81. During voir dire, the jurors were informed that witnesses Bolden and Magee had been indicted, pled guilty, and were serving time for the same crime for which Sharkey was on trial. One venire member responded by stating that the statement already led him to form an opinion about Sharkey's guilt. The juror was struck for cause. During Sharkey's trial, victim Don Patterson, Woodrow Berry, Bolden, and Magee gave essentially the same account of the facts. Patterson testified that Sharkey was the only person who entered his bedroom, where his pistol was located. Patterson and Berry testified that the three men were all working together. Kevin Hinds, a patrol lieutenant for the Stone County Sheriff's Department, testified that he responded to a call regarding an armed robbery. Hinds identified Sharkey as one of the men he had arrested for the armed robbery. Immediately before the State rested, the trial court read an agreed stipulation to the jury that Sharkey previously had been convicted of the felony uttering a forgery. Sharkey moved for a directed verdict on all three counts, but his motion was overruled. Sharkey elected not to testify in his defense, and no other witnesses were called. The jury

was instructed and found Sharkey guilty of all three counts. Sharkey was found to be a habitual offender and was sentenced to a term of fifteen years for Count I, fifteen years for Count II, and ten years for Count III, to run concurrently. Sharkey appealed.

ISSUES

Whether (1) the venire was tainted, rendering Sharkey’s trial unfair; (2) the prosecution’s giving nonverbal signals to a state’s witness during that witness’s testimony was improper; (3) the trial court erred in refusing a duress jury instruction, and (4) the trial court erred in refusing lesser-included-offense instructions for robbery or larceny.

HOLDING

(1) Because the statement was made during voir dire and the juror who told the court that he could not be impartial in light of the statement was excused for cause, there was no abuse of discretion in the trial court’s denial of the motion for mistrial. (2) Because the record does not reflect that the prosecutor gave any hand signals to the witness in front of the jury, the trial court did not abuse its discretion in overruling Sharkey’s objection. (3) Because Sharkey failed to introduce evidence to support a defense of duress, he was not entitled to a jury instruction on duress. (4) Because there was no factual basis supporting an instruction that simple robbery, a robbery without a deadly weapon, occurred or that a mere larceny occurred, the trial court did not err in denying the lesser-included-offense instructions. Therefore, the Supreme Court affirmed the judgment of the Stone County Circuit Court.

CONCURRENCE

Justice Maxwell argued that although he agreed with the majority that there is no reversible error, he feels it is important to address the propriety of both the State and the defendant probing potential jurors about their biases and preconceived views of accomplice guilty pleas. He suggested that the Kentucky Supreme Court put it best by ruling that, although it is improper to show that a co-indictee has already been convicted under the indictment, a statement made referencing the co-indictee conviction during voir dire is not substantive evidence.

DISSENT

Presiding Justice Kitchens argued that the trial court erred by denying the motion for mistrial. He stated that although the prosecutor’s purpose in the case ostensibly was to uncover bias—as opposed to offering the prior guilty pleas as substantive evidence—the revelation of the prior guilty pleas induced a venire member to believe the defendant was guilty by association with his already convicted codefendants. Therefore, since such a result was possible, and, moreover, actually occurred in the case, one cannot argue that the offering of evidence for a different purpose helped mitigate the damages.

Affirmed - 2017-KA-01353-SCT (Feb. 28, 2019)

Opinion by Chief Justice Randolph - Concurrence by Justice Maxwell - Dissent by Presiding Justice Kitchens
Hon. Lawrence Paul Bourgeois, Jr. (Stone County Circuit Court)
George T. Holmes (Pub. Def. Office) for Appellant - Lisa L. Blount (Att’y Gen. Office) for Appellee
Briefed by [Whitney Jackson](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – FEBRUARY 26, 2019

COURT OF APPEALS - CIVIL CASES

LEE V. BRAMLETT

CIVIL - CUSTODY

FAMILY LAW - CHILD CUSTODY - NATURAL PARENT PRESUMPTION - A bedrock principle of Mississippi family law is the natural parent presumption, which gives preference to a child’s natural parents, even against

those who have stood in their place, honoring and protecting the fundamental right of natural parents to rear their children

FAMILY LAW - CHILD CUSTODY - GUARDIAN AD LITEM - The guardian ad litem's role is to act as a representative of the court and to assist the court in protecting the interests of an incompetent person by investigating and making recommendations to the court

FAMILY LAW - ALBRIGHT FACTORS - WILLINGNESS & CAPACITY TO PROVIDE PRIMARY CHILD CARE - The presence of extended family is a legitimate factor to support awarding custody to a parent

FACTS

Lauren Lee and Beau Bramlett had a child born out of wedlock in 2010. Lee and the child lived with Bramlett at his residence in Hattiesburg for the first four years of the child's life. Bramlett worked offshore for three-week intervals, and Lee stayed at home with the child. The couple ended their relationship in 2015, and Lee filed a complaint to establish child custody, seeking child support and temporary and permanent legal and physical custody. In a temporary order, the Lamar County Chancery Court ordered the parties to share physical custody on a week-to-week basis. After Lee moved to Madison in 2017, Bramlett filed a petition for emergency relief requesting permanent physical custody. Lee argued that she should have primary physical custody because she is a stay-at-home, but Bramlett works offshore three out of every six weeks. Bramlett's parents testified they would take care of the child while Bramlett was away at work. Bramlett also lived with his fiancé (now wife) who could take care of the child. Considering the *Albright* factors in conjunction with the guardian ad litem's report, the chancery court awarded primary physical custody to Bramlett and joint legal custody to both parties, granting Lee visitation every other weekend. Lee appealed.

ISSUES

Whether the chancery court erred in (1) disregarding the natural parent presumption; (2) accepting the guardian ad litem's recommendations; and (3) awarding custody to Bramlett.

HOLDING

(1) Because custody was awarded to Bramlett, not his parents, the natural parent presumption applied equally to Lee and Bramlett and the chancery court did not disregard the natural parent presumption. (2) Because the guardian ad litem met the requirements set forth by the chancery court, there was no merit to the claim that the chancery court erred in accepting the guardian ad litem's recommendations. (3) Because the guardian ad litem's report and recommendations considered the *Albright* factors based on credible and competent evidence, there was no error in awarding custody to Bramlett. Therefore, the Court of Appeals affirmed the judgment of the Lamar County Chancery Court.

DISSENT

Judge Lawrence disagreed with awarding Bramlett primary physical custody because he is absent from the home three out of every six weeks, and the child would live with Bramlett's parents and not Lee during that time. He argued that the chancery court disregarded the natural parent presumption by essentially awarding custody to Bramlett's parents over Lee. He further argued that because the presumption that both parents were able to provide care for the child was never disproved, Lee should have been favored in the custody analysis instead of the grandparents. He also found issue with the chancellor's reliance on the report of the guardian ad litem because she did not conduct an adequate investigation to render her opinion reliable. Therefore, Judge Lawrence would have reversed the decision of the chancery court.

Affirmed - 2017-CA-01202-COA (Feb. 26, 2019)

En Banc Opinion by Chief Judge Barnes - Dissent by Judge Lawrence

Hon. M. Ronald Doleac (Lamar County Chancery Court)

William C. Walter for Appellant - Robert R. Marshall & Kimberly-Joy Lockley Miri for Appellee

Briefed by [Baxter Geddie](#)

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CIVIL - STATE BOARDS AND AGENCIES

JUSTICIABILITY - MOOTNESS - ACTUAL CONTROVERSY REQUIREMENT - A case is moot so long as a judgment on the merits, if rendered, would be of no practical benefit to the plaintiff or detriment to the defendant, and an appellate court has no authority to entertain an appeal where there is no actual controversy of law

APPELLATE REVIEW - MOOTNESS - EVADING REVIEW EXCEPTION - A case will not be considered moot if the action is capable of repetition yet evading review, meaning that (1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there was a reasonable expectation that the same complaining party would be subject to the same action again

APPELLATE REVIEW - MOOTNESS - PUBLIC INTEREST EXCEPTION - An appellate court will review an otherwise moot issue when the question concerns a matter of such a nature that it would be distinctly detrimental to the public interest that there should be a failure by the dismissal to declare and enforce a rule for future conduct

FACTS

After inmate Brian Runnels allegedly violated prison rules, the Mississippi Department of Corrections (“MDOC”) issued two Rule Violation Reports (“RVRs”). In response, Runnels filed a grievance through the MDOC’s Administrative Remedy Program. The MDOC denied the request to expunge the RVRs. Runnels then sought judicial review in the Sunflower County Circuit Court alleging that the MDOC failed to conduct any investigation or record the hearing. The court affirmed the MDOC’s decision, and Runnels filed a motion to vacate the judgment. After a hearing, the court concluded its previous ruling was wrong because the state failed to show that any evidence was presented during Runnels’ disciplinary hearing. The court ordered the two RVRs expunged from Runnels’ prison record. Runnels was subsequently released on parole, and the state appealed.

ISSUE

Whether (1) the state’s appeal of the trial court’s order expunging the RVRs from Runnels’ prison record was moot due to his release from MDOC custody on parole and (2) an exception to the mootness doctrine was applicable.

HOLDING

(1) Because a case is moot if a judgment would not practically benefit the plaintiff nor cause detriment to the defendant and because the state’s argument that Runnels’ earned time and privileges, based on the RVRs, would be different if he returned to prison is a speculative engagement, the issue was moot; (2) Because there is no reasonable expectation that Runnels could be subjected to the same action (RVRs) in the future and because Runnels fully litigated the issue, the evading review exception to the mootness doctrine was inapplicable. Further, the public interest exception was inapplicable because prisoners have a statutory right to judicial review of an MDOC decision. Therefore, the Court of Appeals dismissed the state’s appeal as moot.

Appeal Dismissed - 2016-CA-01754-COA (Feb. 26, 2019)

Opinion by Chief Judge Barnes

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

Anthony Louis Schmidt Jr. for Appellants - *Pro Se* for Appellee

Briefed by [Tucker Hood](#)

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WILKINSON V. WILKINSON

CIVIL - CUSTODY

FAMILY LAW - CUSTODY - MODIFICATION - The noncustodial parent must prove (1) a material change in circumstances has occurred since the issuance of the judgment or decree sought to be modified; (2) the change adversely affects the welfare of the child; and (3) the proposed change in custody would be in the best interest of the child

CIVIL PROCEDURE - ORDER VIOLATION - CONTEMPT PROCEEDINGS - To determine whether a party has deliberately and intentionally violated a court order, the inquiry is limited to the issues as to whether or not the order was violated, if it was possible to carry out the order of the court, and whether such a violation was an intentional and willful refusal to abide by the order of the court

FAMILY LAW - CHILD SUPPORT - CONTEMPT - A prima facie case of contempt is established when the party entitled to receive support introduces evidence that the party required to pay the support has failed to do so and the burden then shifts to the paying party to show an inability to pay or raise other defenses

FACTS

Rod Wilkinson and Stephanie Wilkinson agreed to a divorce in 2015, and Stephanie was granted primary physical custody of their daughter, Olivia. Rod was ordered to pay child support, and both parties agreed not speak to one another in a derogatory or disrespectful manner in front of Olivia. Following the divorce, Rod and Stephanie resumed their sexual relationship from August 2015 to January 2016, but the relationship was volatile, abusive, and often profane in the presence of Olivia. This relationship resulted in Rod regularly spending the night at home with Stephanie and Olivia, contrary to the visitation schedule. After a series of altercations, Stephanie obtained domestic-abuse protection orders against Rod, prohibiting contact between the two, which interfered with Rod's physical and phone visitations with Olivia. Rod filed a motion for contempt and modification of custody, seeking physical custody of Olivia. Stephanie filed a counter-claim for contempt, alleging Rod twice failed to return Olivia at the proper time and failed to pay child support. The Chancellor dismissed the modification claim and entered a final judgment holding Rod in contempt for failure to pay child support and for not returning Olivia after two holiday weekend visits. Stephanie was not found in contempt of the visitation requirements, but both parties were in contempt for derogatory speech in front of Olivia. Rod appealed.

ISSUES

Whether the chancellor (1) abused her discretion in dismissing Rod's motion to modify custody; (2) erred in finding Stephanie was not in contempt for interfering with Rod's visitation; (3) erred in finding Rod in contempt for failure to make child support payments; (4) erred in finding Rod in contempt for violating physical visitation requirements; (5) erred in finding Rod in contempt for using derogatory speech in front of Olivia; and (6) erred in awarding attorney's fees to Stephanie.

HOLDING

(1) Because no adverse material change was found, the best interest of the child was to remain in Stephanie's custody and the chancellor did not abuse her discretion in dismissing the motion to modify custody. (2) Because Rod and Stephanie continued an on-and-off de facto marital relationship which failed to comply with the visitation schedule, Stephanie was not in willful, contumacious, and obstinate contempt of the visitation schedule. (3) Because Rod had not made required child support payments and failed to assert an inability to pay or other defense, the chancellor correctly found Rod in contempt. (4) Because evidence indicated that Rod willfully disregarded the custody agreement, the chancellor did not err in finding Rod in contempt for failure to comply with the custody agreement. (5) Because Rod admitted to an instance of using profane and vulgar language in front of Olivia, the Chancellor did not commit manifest error in finding Rod in contempt. (6) Because the chancellor was entitled to award Stephanie attorney's fees for the two findings of contempt against Rod, no error occurred. Therefore, the Court of Appeals affirmed the judgment of the Hancock County Chancery Court.

PARTIAL CONCURRENCE/DISSENT

Judge McCarty agreed with the conclusion reached but argued that the majority erred by suspending child support payments during months that Rod and Stephanie continued their relationship because the payments are for the benefit of the child and should not be bargained or contracted away by her parents. Furthermore, Judge McCarty argued that the majority erred by recognizing a quasi-reconciled, on-and-off relationship as sufficient to suspend the child support payments because the state does not recognize common law marriage and there was no remarriage as a matter of law.

Affirmed - 2017-CA-00973-COA (Feb. 26, 2019)

En Banc Opinion by Chief Judge Barnes - Partial Concurrence/Dissent by Judge McCarty
Hon. Jennifer T. Schloegel (Hancock County Chancery Court)

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COURT OF APPEALS - POST-CONVICTION RELIEF

ROBERSON V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - INEFFECTIVE ASSISTANCE OF COUNSEL - GUILTY PLEA - An ineffective assistance of counsel claim requires a showing that (1) counsel's performance was deficient, and (2) this deficient performance resulted in prejudice to the defendant, and that in the context of a guilty plea, one must additionally show counsel's errors proximately resulted in the guilty plea and, but for counsel's error, the defendant would not have entered the guilty plea

POST-CONVICTION RELIEF - GUILTY PLEA - VOLUNTARINESS - A guilty plea is voluntarily and intelligently made if the circuit court advised the defendant of his rights, the nature of the charge against him, as well as the consequences of the plea, and the plea of guilty is not voluntary if induced by fear, violence, deception, or improper inducements

POST-CONVICTION RELIEF - CUMULATIVE ERROR - STANDARD - Under the cumulative error doctrine, individual errors may combine with other errors to make up reversible error, where the cumulative effect of all errors deprives the defendant of a fundamentally fair trial

FACTS

In March 2015, Ocean Travell Roberson was indicted on one count of statutory rape of a child under fourteen-years old in violation of Miss. Code. Ann. § 97-3-65(1)(b). In May 2015, Roberson pleaded guilty, and the circuit court sentenced him to twenty years in the custody of the Mississippi Department of Corrections ("MDOC"), with twelve years suspended and the remaining eight years to serve. Roberson filed a PCR motion in 2018 alleging several issues. The circuit court denied Roberson's PCR motion on all grounds. Roberson appealed.

ISSUES

Whether (1) the circuit court erred in finding that Roberson's counsel was not ineffective; (2) the circuit court erred in finding that the indictment was sufficient; (3) the circuit court erred in not amending the indictment; (4) the circuit court erred in finding Roberson's guilty plea was sufficient; (5) the circuit court erred in finding Roberson's guilty plea was voluntary; and (6) cumulative errors infected the court's fairness and Roberson's fundamental rights.

HOLDING

(1) Because Roberson presented no evidence to support that his attorney was ineffective and because Roberson in fact informed the circuit court that he had an opportunity to go over the charges with his attorney and that he was completely satisfied with his attorney's representation, Roberson's claim of ineffective assistance of counsel lacked merit. (2) Because Roberson cited no legal authority to support his assertion that the indictment was insufficient and because a valid guilty plea waves all non-jurisdictional defects contained in the indictment, this issue lacked merit. (3) Because Roberson's guilty plea validated any alleged insufficiencies, the indictment was valid. (4) Because Roberson's plea hearing clearly reflects that he was informed of the essential elements, nature of the charges against him, and the facts surrounding this guilty plea, his plea was sufficient. (5) Because the record reflects that Roberson understood the charges against him and that his guilty plea was free and voluntary, the issue was meritless. (6) Because Roberson entered a plea of guilty, and his indictment was a valid charging instrument, there was no error in part, and there can be no reversible error to the whole, the circuit court properly denied Roberson's motion for a post-conviction relief and the issue lacked merit. Therefore, the Court of Appeals affirmed the judgment of the Winston County Circuit Court.

Affirmed - 2018-CP-00433-COA (Feb. 26, 2019)

En Banc Opinion by Judge Westbrook
Hon. Joseph H. Luper Jr. (Winston County Circuit Court)
Pro Se for Appellant - Scott Stuart (Att'y Gen. Office) for Appellee
Briefed by [Carson Phillips](#)

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