

MISSISSIPPI SUPREME COURT DECISIONS – AUGUST 16, 2018**SUPREME COURT - CIVIL CASES****CLARK V. NEESE****CIVIL - PERSONAL INJURY**

CIVIL PROCEDURE - RES JUDICATA - ELEMENTS - For res judicata to bar an action, four elements must be met: (1) identical subject matter of the actions, (2) identical causes of action, (3) identical parties to the causes of action, and (4) identical quality or character of a person against whom the claim is made

RES JUDICATA - PREVIOUS SETTLEMENT AGREEMENTS - PRIVITY - Joint and independent tortfeasors are not necessarily in privity with one another for the basis of claiming res judicata on the grounds of a previous settlement agreement

SETTLEMENT AGREEMENTS - JOINT TORTFEASORS - RELEASE - A settlement agreement with one joint tortfeasor does not bar an action against another joint tortfeasor; Further, a settlement agreement that is unambiguous only releases the parties specifically named

FACTS

Royce Sullivan was driving a log truck when he collided with the back end of a vehicle driven by Harry Schroeder. Helen Schroeder was a passenger in the vehicle with Harry. Harry died as a result of his injuries, and Helen suffered severe injuries, including a permanent disability. Helen sued Sullivan in federal court as Harry's wrongful death beneficiary. Sullivan moved for summary judgment arguing that Harry's negligence caused the accident. The federal judge denied summary judgment, stating that the evidence created a jury question regarding Sullivan's fault in the accident. The parties then came to a settlement agreement which included a release of claims. Helen then filed suit against Harry's estate for Harry's negligence in causing the injuries she received in the accident. The trial court granted summary judgment for Harry's estate on the grounds of judicial estoppel. The Supreme Court reversed and remanded the case. Subsequently, the trial court granted summary judgment on the basis of res judicata, contractual release, and accord and satisfaction. Helen appealed.

ISSUES

Whether the trial court erred in (1) granting summary judgment on the basis of res judicata; (2) finding that the settlement agreement released the estate of Harry; and (3) finding that Helen's suit was barred by the doctrine of accord and satisfaction.

HOLDING

(1) Because the identity of the parties to the cause of action were not the same, the identity of the quality or character of the parties were not the same, and a settlement agreement is not a judgment on the merits, the trial court erred in granting summary judgment on the basis of res judicata. (2) Because a settlement agreement does not release an independently liable joint tortfeasor, and because the settlement agreement entered in federal court was unambiguous as to whom was being released, the trial court erred in finding that Harry's estate was released by Helen's settlement agreement with Sullivan. (3) Because accord and satisfaction of a demand released in consideration for full satisfaction of the claim is only effective against the party to which the demand is being made, and because the settlement agreement only accepted the claims of Sullivan as satisfied, the trial court erred in finding that Helen's suit against Harry's estate was barred by the doctrine of accord and satisfaction. Therefore, the Supreme Court reversed the judgment of the Lowndes County Circuit Court.

Reversed & Remanded - 2016-CA-01052-SCT (Aug. 16, 2018)

Opinion by Chief Justice Waller

Hon. James T. Kitchens Jr. (Lowndes County Circuit Court)

Dunbar Dowdy Watt & Wayne Dowdy for Appellant - Norma Carr Ruff, Dan W. Webb, & Roechelle Ryann Morgan for Appellee

Briefed by [Yance Falkner](#)

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HEMPHILL CONSTR. CO. V. CITY OF CLARKSDALE

CIVIL - OTHER

ADMINISTRATIVE LAW - CITY PROJECTS - BID SELECTION - Miss. Code Ann. § 31-7-13 provides that if all bids are more than ten percent of the allocated funds, a governing authority may not award a bid the contract

ADMINISTRATIVE LAW - CITY PROJECTS - ADDITIONAL FUNDING - Miss. Code Ann. § 31-7-13 precludes a governing authority from obtaining additional funding for a project after sealed bids are opened, if that bid exceeded ten percent of the allocated funds for the project

ADMINISTRATIVE LAW - CITY PROJECTS - COMPETITIVE BIDDING - Statutory requirements of competitive bidding promote actual, honest, and effective competition and protect the public from collusive contracts, favoritism, fraud, extravagance, and improvidence

FACTS

The City of Clarksdale (the “City”) solicited bids for a public construction project. They received sealed bids from Landmark Construction Company (“Landmark”) and Hemphill Construction Company (“Hemphill”). Both bids exceeded the project’s allocated funds by more than ten percent. The City conditionally awarded the contract to Landmark, dependent upon the City obtaining additional funding. The City subsequently received additional funding. Hemphill filed a Bill of Exceptions with the Coahoma County Circuit Court, disputing the award of the contract to Landmark. The Circuit Court held that the City’s award of the project to Landmark did not violate state law. Hemphill appealed.

ISSUE

Whether the trial court erred in finding that the City did not violate Miss. Code Ann. § 31-7-13 by awarding the contract to Hemphill when all bids submitted exceeded the allocated funds for the project by more than ten percent.

HOLDING

Because both submitted bids exceeded the original allocated funds by more than ten percent, the City was without statutory authority under Miss. Code Ann. § 31-7-13 to award either bid, or to obtain additional funds after the opening of a sealed bid. Therefore, the Supreme Court reversed and remanded the judgment of the Coahoma County Circuit Court.

DISSENT

Justice Ishee argued that Miss. Code Ann. § 31-7-13 did not preclude a governing authority from securing additional funding for a project after the opening of sealed bid.

Reversed & Remanded - 2017-CA-00008-SCT (Aug. 16, 2018)

En Banc Opinion by Presiding Justice Randolph - Dissent by Justice Ishee

Hon. Linda F. Coleman (Coahoma County Circuit Court)

Christopher Solop & Lynn Patton Thompson for Appellant - Curtis D. Boschert for Appellee

Briefed by [Zachary Flowers](#)

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IN RE C.W. MISS. DEP'T. OF MENTAL HEALTH V. LAMAR COUNTY

CIVIL - UNCONSTITUTIONAL STATUTE

HEALTHCARE LAW - MENTAL ILLNESS - COMMITMENT - Miss. Code Ann. § 41-21-77 states that no person shall be delivered or admitted until the director of the admitting institution determines that facilities and services are available

REMEDIES - CRIMINAL CONTEMPT - PURPOSE - Unlike civil contempt, which is designed to enforce the rights to private party litigants or enforce compliance with a court order, criminal contempt is designed to punish the contemnor for disobediences of a court order

REMEDIES - CRIMINAL CONTEMPT - DIRECT-CONTEMPT - Direct-criminal contempt occurs when the contemptuous act is made in the immediate presence of the court, while constructive-criminal contempt occurs when the contemptuous act is made outside the presence of the court

FACTS

Two patients, C.W. and R.M., were committed to the South Mississippi State Hospital (SMSH) for mental health treatment by the Lamar County Chancery Court. Upon receiving the orders of commitment, SMSH Facility Director Sabrina Young denied admission to both patients, arguing to the Lamar County Chancery Clerk that they were not mentally ill but rather needed treatment for substance abuse issues. Young based the authority for denial on Miss. Code Ann. § 41-21-77. The chancery court then released C.W. and R.M. from the custody of Lamar County and issued show-cause orders directing Young to show cause as to why she should not be held in contempt of court after refusing to abide the orders of commitment. The show cause orders also directed the Attorney General to show cause as to why Miss. Code Ann § 41-21-77 should not be declared unconstitutional to the extent that it allowed Young to refuse treatment to C.W. and R.M. At the conclusion of the show-cause hearing, Special Master William Andrews found Young to be in civil contempt and sanctioned her the sum of \$1,400. Additionally, Special Master Andrews found that if the contempt finding was not upheld, and Miss. Code Ann. § 41-21-77 allowed a state hospital to overrule an order of commitment, then Miss. Code Ann. § 41-21-77 would be unconstitutional. Special Master Andrews also found Miss. Code Ann. § 41-21-77 to be an encroachment of executive action on judicial powers of the court, and thus, a violation of the Mississippi Constitution. Chancellor Gambrell adopted the findings of fact and conclusions of law. The State of Mississippi and the Department of Mental Health appealed.

ISSUES

Whether (1) Miss. Code Ann. § 41-21-77 allows a director of a state hospital to override a commitment order of a chancery court for treatment of mental illness; (2) the chancery court's classification of the contempt was made in error; and (3) correct procedures were followed in the finding of contempt.

HOLDING

(1) Because Miss. Code Ann. § 41-21-77 does not grant the director of a state hospital the authority to override an order of commitment from a chancery court, Young had no legal grounds to overrule the commitment orders. The question of the statute's constitutionality was not an issue that needed to be addressed. (2) Because the finding of contempt was designed to punish the facility director for past actions of refusing admission to the patients, the type of contempt imposed was constructive-criminal contempt, not civil contempt. (3) Because the chancery court failed to provide Young with proper notice when imposing criminal contempt, the contempt proceedings were conducted in a procedurally defective manner. Therefore, the Supreme Court reversed the judgment of the Lamar County Chancery Court.

Reversed & Remanded - 2017-CA-00718-SCT (Consolidated with 2017-CA-00721-SCT) (Aug. 16, 2018)

Opinion by Justice Ishee

Hon. Deborah J. Gambrell (Lamar County Chancery Court)

Mary Jo Woods, Douglas T. Miracle, William Melvin Rosamond (Att'y Gen. Office), & Cynthia Tomlinson Eubank for Appellants
- Kathy Denise Sones for Appellee

Briefed by [Ryan Overturf](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – AUGUST 14, 2018

COURT OF APPEALS - CIVIL CASES

JONES V. MISS. INST. OF HIGHER LEARNING

CIVIL - CONTRACT

MISS. TORT CLAIMS ACT - QUALIFIED IMMUNITY - WAIVER - State actors are generally immune from liability for torts arising from implied provisions of contracts; however, Miss. Code Ann. §11-46-5 provides a limited waiver of this immunity so long as malice is not an essential element of the claim

MISS. TORT CLAIMS ACT- NOTICE - PRE-SUIT NOTICE - Miss. Code Ann. § 11-46-11 requires a clamant to file a notice of claim with a state entity’s executive officer at least ninety days before filing suit for a claim under the Act

MISS. TORT CLAIMS ACT- IMMUNITIES - TORTIOUS INTERFERENCE - The Miss. Tort Claims Act does not prevent claims for tortious interference with contractual relations against state agents acting in an individual capacity

FACTS

Ernest Jones was a coach at Alcorn State University. He alleged that the University violated his employment contract by failing to furnish him with necessary resources and by failing to renew assistant coaching contracts. He specifically identified the Alcorn State’s Athletic Director, Darren Hamilton, as interfering with the contract. After being terminated from Alcorn State, Jones sought leave from the court to amend his complaint to include wrongful termination. The trial court denied leave to amend, and after a jury returned a verdict for Jones, the Court granted the defendant’s motion for judgment as a matter of law against Jones. Jones appealed.

ISSUES

Whether (1) Jones had a viable claim for breach of the implied covenant of good faith and fair dealing; (2) the Mississippi Tort Claims Act (“MTCA”) applied to the claim of breach of implied covenant of good faith and fair dealing; (3) Jones should have been allowed to pursue a breach of contract claim based on his termination; and (4) the MTCA bars Jones’s tortious interference claim against Hamilton.

HOLDING

(1) Because a breach of an express provision of the parties’ contract is not a necessary condition of a claim for breach of the implied covenant of good faith and fair dealing, and a written employment contract for a definite term that is terminable only for cause contains an implied covenant of good faith and fair dealing, Jones had a viable claim. (2) Because by its plain language the MTCA applies to any claim for any breach of an implied term or condition of any contract, the MTCA applied to Jones’s claim. Additionally, although Jones did not satisfy the MTCA’s pre-suit notice requirements and his claim should be dismissed, Jones’s properly served complaint tolled the statute of limitations, so the claim should be dismissed without prejudice and Jones should be allowed to re-file. (3) Because Jones’s prior appeal of his termination did not preclude his claim for breach of contract, the circuit court abused its discretion by denying Jones’s motion for leave to amend his complaint to specifically assert a claim for breach of contract based on his allegedly wrongful termination. (4) Because tortious interference with a contract is not subject to the MTCA, the circuit court erred by dismissing Jones’s tortious interference claim against Hamilton in Hamilton’s individual capacity. Therefore, the Court of Appeals reversed and remanded the judgment of the Claiborne County Circuit Court.

Reversed & Remanded - 2016-CA-01050-COA (Aug. 14, 2018)

Opinion by Judge Wilson

Hon. Lamar Pickard (Claiborne County Circuit Court)

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THORNTON V. THORNTON

CIVIL - DOMESTIC RELATIONS

CIVIL - CIVIL PROCEDURE - CONCURRENT JURISDICTION - Pursuant to Rule 60(b), there is concurrent jurisdiction between trial and appellate courts, allowing the trial court to grant relief from the judgment despite a perfected appeal

CIVIL - PROPERTY DIVISION - FERGUSON FACTORS - Despite the *Ferguson* factors being paramount to property division, if the chancellor considered relevant facts, then a lack of explicit factor by factor analysis does not automatically constitute a reversal

CIVIL - DOMESTIC RELATIONS - ALIMONY - Alimony shall only be awarded after a complete and proper equitable division of the marital estate

FACTS

Brenda Thornton obtained a divorce from Tim Thornton, on the basis of adultery, in Pike County Chancery Court. The chancellor itemized and divided their personal property, ruled that Tim pay monthly child support and alimony, but declined to decide on Brenda's Rule 60(b) motion to set aside the judgment. Brenda appealed.

ISSUES

Whether (1) the Rule 60(b) denial was properly before the Court; (2) the petition of contempt denial was properly before the Court; (3) the property was properly distributed under *Ferguson*; and (4) the chancellor erred awarding alimony.

HOLDING

(1) Because the chancellor declined to rule on the Rule 60(b) motion after Brenda filed the notice of appeal, the issue was not properly before the Court. (2) Because the contempt action was separate from the divorce judgment cited in the notice of appeal, the issue should have been raised in a separate notice of appeal and was not properly before the Court. (3) Because the record lacked sufficient discussion of the *Ferguson* factors for appellate review, the Court reversed and remanded the chancellor's distribution of assets. (4) Because the record lacked discussion on the *Ferguson* factors to support the equitable distribution of property, whether Brenda should have received alimony is unclear. Therefore, the Court of Appeals reversed and remanded the judgment of the Pike County Chancery Court.

DISSENT

Presiding Judge Griffis argued that although the specific *Ferguson* factors were not discussed, the record's discussion rose to the level of "considering the relevant facts." Further, precedent dictates that the Court has appellate review even if a chancellor fails to articulate an explicit *Ferguson*-factor analysis.

Reversed & Remanded - 2016-CA-01773-COA (Aug. 14, 2018)

Opinion by Judge Carlton - Dissent by Presiding Judge Griffis

Hon. Wayne Smith (Pike County Chancery Court)

Amelia Sha'metta Carter for Appellant - Edwin L. Bean Jr. for Appellee

Briefed by [Brandon Wilson](#)

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WALKER V. BAILEY

CIVIL - OTHER

APPELLATE PROCEDURE - AFFIRMATION - INCORRECT REASONING - An appellate court may affirm a circuit court's decision if the correct result is reached, even if the circuit court reached that result with incorrect reasoning

CIVIL PROCEDURE - LIMITATION OF ACTIONS - IN FORMA PAUPERIS CLAIMS - Excessive, frivolous filing of in forma pauperis claims does not preclude those claims from court, but instead forecloses a party from bringing them in forma pauperis

CIVIL PROCEDURE - DISMISSAL - PREJUDICED CLAIMS - Unless a court considers or addresses the merits of an underlying claim, a dismissal should be without prejudice

FACTS

Demario Walker was arrested and incarcerated in the Rankin County jail. He filed a complaint, in forma pauperis, alleging that county officials failed to protect him, failed to implement and maintain adequate health care, failed to provide adequate supervision, and operated the jail in unsafe and unsecure conditions. Additionally, Walker alleged that he was sexually assaulted by another inmate at the jail. Summonses were issued and served upon the defendants, and after no appearance was made, the circuit clerk entered a default in Walker's favor. However, the circuit court found that Walker had filed numerous previous, frivolous complaints in forma pauperis that were dismissed, and thus the court dismissed Walker's complaint with prejudice pursuant to Miss. Code Ann. § 47-5-76(1). Walker appealed.

ISSUES

Whether the trial court erred in (1) dismissing Walker's complaint under Miss. Code Ann. § 47-5-76(1); (2) dismissing this action with prejudice; and (3) granting Walker's request to appeal in forma pauperis.

HOLDING

(1) Because Walker's financial documentation shows that he was unable to afford the cost associated with filing suit, dismissal was proper even if the trial court failed to properly determine Walker's financial status. (2) Because the trial court did not address or consider the merits of Walker's claims, the dismissal should have been without prejudice. (3) Because the right to proceed in forma pauperis in civil cases does not extend beyond the initial trial of the matter, the trial court erred in granting Walker in forma pauperis status on appeal. Therefore, the Court of Appeals affirmed, as modified, the judgment of the Rankin County Circuit Court.

DISSENT

Presiding Judge Irving argued that the trial court improperly considered information not before it, improperly judicially noticed facts, and improperly dismissed the imminent danger exception to frivolous filings, therefore he would have reversed and remanded the case for further proceedings.

Affirmed as Modified - 2017-CP-00450-COA (Aug. 14, 2018)

Opinion by Presiding Judge Griffis - Dissent by Presiding Judge Irving

Hon. Steve S. Ratcliff III (Rankin County Circuit Court)

Pro se for Appellant - *Pro se* for Appellees

Briefed by [David Wellen](#)

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COURT OF APPEALS - POST-CONVICTION RELIEF

JORDAN V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - PROBATION - TECHNICAL VIOLATION - Miss. Code Ann. § 47-7-37(5)(a) states that for the third technical violation of probation, the court may impose a period of imprisonment to be served in either a technical violation center or a restitution center for up to 180 days or the court may impose the remainder of the suspended portion of the sentence

POST-CONVICTION RELIEF - PROBATION - REVOCATION - If a court finds by a preponderance of the evidence, that a probationer or a person under post-release supervision has committed a felony or absconded, the court may revoke his probation and impose any or all of the sentence

POST-CONVICTION RELIEF - PROBATION - REVOCATION - A probationer does not have to be convicted of a crime to be in violation of his probation but, rather, probation may be revoked when it is more likely than not that a violation occurred

FACTS

Tommie Gonzalez Jordan pled guilty to burglary and was sentenced to twenty-five years in prison, twenty years suspended, and five years of post-release supervision. Jordan violated the terms of his post-release supervision and, after his first revocation hearing, the trial court allowed him to remain on post-release supervision if he completed a drug and alcohol rehabilitation program. Later, after completing the program and being placed on post-release supervision, Jordan failed a drug test. At his second revocation hearing, the trial court ordered Jordan to be placed in a technical violation center for ninety days, followed by five years of post-release supervision. Jordan later violated his post-release supervision, and the trial court revoked his suspended sentence and ordered Jordan to serve the remainder of his burglary sentence. Jordan appealed.

ISSUE

Whether the trial court erred in revoking Jordan's suspended sentence.

HOLDING

Because the record clearly showed that the trial court revoked Jordan's suspended sentence during his third revocation hearing, the trial court did not err in revoking Jordan's sentence. Therefore, the Court of Appeals affirmed the judgment of the Monroe County Circuit Court.

Affirmed - 2017-CP-00664-COA (Aug. 14, 2018)

Opinion by Judge Barnes

Hon. James Lamar Roberts, Jr. (Monroe County Circuit Court)

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

Briefed by [Davis Pigg](#)

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LEWIS V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - APPEALS - APPELLANT'S DUTY - The appellant bears the burden of providing authority and support for the issues he presents to the court

POST-CONVICTION RELIEF - REVOKING PROBATION - JUDGE'S DUTY - If a trial judge is considering revoking probation in part or in whole because of failure to make required payments, the judge has an affirmative duty to inquire into the reasons for the failure to make payments

POST-CONVICTION RELIEF - PROBATION REVOCATION - PRELIMINARY HEARING - Pursuant to Miss. Code Ann. § 47-7-37(3), an informal preliminary revocation hearing must be conducted within seventy-two hours of arrest, and the revocation hearing must be held within twenty-one days or the offender should be released from custody and returned to PRS status, however, these deadlines are only triggered if the arrest was pursuant to a warrant for alleged violation of probation

FACTS

On August 12, 2011, Armond Raheem Lewis (“Lewis”) pled guilty to aggravated assault and possession of a controlled substance. He was sentenced to twenty years for the aggravated assault with twelve years on post-release supervision (“PRS”) and eight years to serve in the custody of the Mississippi Department of Corrections (“MDOC”). He was also sentenced to eight years for possession of a controlled substance. The sentences were to run concurrently. Sometime after Lewis was released on PRS, he committed several violations, and the State filed its intent to revoke Lewis’s PRS. The State argued that Lewis’s PRS should be revoked due to Lewis’s: (1) charge for a false ID, (2) charge for domestic violence, (3) arrest for possession of marijuana, (4) failure to report to MDOC, and (5) failure to pay all court ordered fines and fees. Lewis filed a motion for post-conviction relief (“PCR”). The circuit court denied Lewis’s motion. Lewis appealed.

ISSUES

Whether the trial court erred by (1) failing to ask Lewis why his restitution payments had not been made; (2) failing to hold Lewis’s revocation hearing within seventy-two hours of his arrest, (3) failing to recognize that Lewis alleged violations were only technical violations; and (4) unconstitutionally revoking Lewis’s PRS.

HOLDING

(1) Because Lewis did not allege an inability to pay the fine and supervision fees at the revocation hearing, and there are other central reasons why his probation was revoked, this issue was at most harmless error. (2) Because Lewis was detained on a separate charge and not pending a decision on the revocation of his PRS, the seventy-two-hour deadline was not triggered. (3) Because the three technical violations entitled the trial court to impose the suspended portion of Lewis’s sentence, the revocation was proper with or without considering the false identification charge. (4) Because Lewis offered no support or authority and wholly failed to create any doubt as to the constitutionality of the statute, the claim was without merit. Therefore, the Court of Appeals affirmed the judgment of the Jackson County Circuit Court.

CONCURRENCE

Judge Westbrook disagreed with the majority’s analysis of the trial court’s duty regarding Lewis’s court fines and fees. She argued that the trial court had an affirmative duty to inquire into why Lewis failed to pay his fines and fees because the trial court included the failure to pay among its listed reasons in its determination to revoke his probation.

Affirmed - 2017-CP-00406-COA (Aug. 14, 2018)

Opinion by Judge Tindell - Concurrence by Judge Westbrook

Hon. Robert P. Krebs (Jackson County Circuit Court)

Pro se for Appellant - Barbara Wakeland Byrd (Att’y Gen. Office) for Appellee

Briefed by [Whitney Jackson](#)

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PAYTON V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - STATUTE OF LIMITATIONS - PROCEDURAL BAR - Under Miss. Code Ann. § 99-39-5(2), a motion for post-conviction relief must be filed within three years following the entry of judgment of conviction and failure to file within the three-year period procedurally bars appeal of the dismissal of the motion

POST-CONVICTION RELIEF - STATUTE OF LIMITATIONS - WAIVER - The statute of limitations may be waived when a fundamental constitutional right is implicated

POST-CONVICTION RELIEF - DISMISSAL - EVIDENTIARY HEARING - A court may dismiss a post-conviction relief motion without an evidentiary hearing if it is supported solely by the petitioner’s own affidavit because it fails to meet the pleading requirements of Miss. Code Ann. § 99-39-9

FACTS

On June 27, 2008, David Payton was indicted of two counts of robbery and one count of receiving stolen property. The State moved to amend the indictment to include Payton's habitual-offender status on November 16, 2009. On November 17, Payton entered a guilty plea to Count II of the indictment, armed robbery. As part of the plea agreement, the other two counts were remanded to the trial court, which dropped Payton's habitual-offender status. The trial court sentenced Payton to twenty-five years in prison. In 2016, Payton filed a motion for post-conviction relief. Payton asserted ineffective assistance of counsel due to counsel's failure to inform him of certain plea offers prior to trial and that his claim was exempted from the procedural time bar. Payton attached only his own affidavit to support his claim. The trial court denied Payton's PCR motion as time-barred by the three-year statute of limitations. Payton appealed.

ISSUE

Whether the trial court erred in denying Payton's motion for post-conviction relief.

HOLDING

Because Payton failed to establish through his PCR motion or affidavit that counsel failed to communicate a plea offer to him to exempt his claim from the procedural time bar, Payton's motion was barred by the three-year statute of limitations and was properly dismissed. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Circuit Court.

Affirmed - 2016-CP-00481-COA (Aug. 14, 2018)

Opinion by Judge Barnes

Hon. William A. Gowan Jr. (Hinds County Circuit Court, First Judicial Dist.)

Pro se for Appellant - Laura Hogan Tedder (Att'y Gen. Office) for Appellee

Briefed by [Katelin Davis](#)

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YOUNG V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - EQUAL PROTECTION - SENTENCING - Disparate sentences for co-defendants do not, by themselves, suggest any constitutional infirmity in either sentence

POST-CONVICTION RELIEF - APPELLATE PROCEDURE - PROCEDURAL BAR - A petitioner who fails to raise an issue in the trial court may not raise that issue for the first time on appeal

FACTS

Eric Young pled guilty to armed robbery and was sentenced to twenty years in the custody of the Mississippi Department of Corrections. Young filed a petition for post-conviction relief, claiming that his sentence violated the Equal Protection Clause because his co-defendant was sentenced to just ten years. The Hinds County Circuit Court dismissed Young's petition. Young appealed.

ISSUE

Whether the four new issues Young presented for the first time on appeal are proper.

HOLDING

Because Young did not raise the four new issues in the trial court, the Court is precluded from reviewing them on appeal. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Circuit Court.

Affirmed - 2016-CP-01760-COA (Aug. 14, 2018)

Opinion by Judge Fair

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

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

Briefed by [Luke Phillips](#)

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COURT OF APPEALS - CRIMINAL CASES

CRUSE V. STATE

CRIMINAL - FELONY

APPEAL AND ERROR - MOTION TO WITHDRAW - COURT DISCRETION - The trial court has complete discretion when considering a motion to withdraw as counsel

CRIMINAL LAW - APPEAL AND ERROR - SUFFICIENCY OF EVIDENCE -The evidence must be sufficient enough to enable a reasonable jury to find the accused guilty of the indicted offenses

CRIMINAL LAW - APPEAL AND ERROR - WEIGHT OF EVIDENCE - A verdict will be disturbed on appeal when it is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice

FACTS

Andrew Cruse was indicted for kidnapping, aggravated assault, forcible sexual intercourse, and sexual battery. During trial, Cruse filed complaints against his attorney, James Davis. Davis moved to withdraw as counsel, but the court denied the motion and proceeded with trial. Cruse did not receive the DNA results from the crime lab until the trial had begun. After being acquitted of sexual battery and convicted of kidnapping, aggravated assault, and forcible sexual intercourse, Cruse moved for a judgment notwithstanding the verdict, or in the alternative, for a new trial. The trial court denied the motion. Cruse was sentenced to life in prison without parole. Cruse appealed.

ISSUES

Whether (1) the trial court erred in refusing to allow Cruse's attorney to withdraw; (2) the evidence was not sufficient enough for a jury to find Cruse guilty; (3) the jury's verdict was against the overwhelming weight of the evidence; (4) the crime-lab report and the denial of his motion for continuance created cumulative error; and (5) Cruse was affected by ineffective assistance of counsel.

HOLDING

(1) Because the record showed that Cruse was likely to file bar complaints against future counsel, the trial court did not abuse its discretion in denying the withdrawal. (2) Because the evidence was sufficient to enable a reasonable jury to find Cruse guilty of the indicted offenses, the issue was without merit. (3) Because the verdict was not contrary to the overwhelming weight of the evidence that to allow Cruse's conviction to stand would sanction an unconscionable injustice, the issue was without merit. (4) Because there was no proof that the crime-lab report was withheld from Cruse and because Cruse was not prejudiced by the denial of his motion for a continuance, the issue was without merit. (5) Because the record did not reflect ineffectiveness of constitutional dimensions, the Court declined to address the issue. Therefore, the Court of Appeals affirmed the judgment of the Harrison County Circuit Court.

Affirmed - 2017-KA-00314-COA (Aug. 14, 2018)

Opinion by Judge Westbrook

Hon. Christopher Louis Schmidt (Harrison County Circuit Court, First Judicial Dist.)

Benjamin Allen Suber, George T. Holmes, & Erin E. Briggs (Pub. Def. Office) for Appellants - Kat Taylor Gerber (Att'y Gen. Office) for Appellee

Briefed by [Drey Russell](#)

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JOHNSON V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - NEW TRIAL - WEIGHT OF EVIDENCE - The trial court's verdict is reviewed only for abuse of discretion and disturbed only when a verdict is so contrary to the overwhelming weight of evidence that to allow it would be an unconscionable injustice

EVIDENCE - JURY INSTRUCTION - UNCORROBORATED TESTIMONY - When an accomplice jury instruction is requested, the jury must be instructed that the uncorroborated testimony should be regarded with great caution and suspicion

EVIDENCE - JURY DISCRETION - WITNESS TESTIMONY - The jury is the judge of the weight and credibility of testimony and is free to accept or reject all or some of the testimony given by each witness

FACTS

Camara Johnson, Cordale McCarty, and Marquis McKinney were all indicted for crimes related to the shooting of Ervin Simmons and Trasharria Mitchell. A Washington County jury found Johnson guilty of the first-degree murder of Simmons and the aggravated assault of Mitchell. The evidence against Johnson consisted partly of testimony from co-defendant McCarty. The Washington County Circuit Court sentenced Johnson to concurrent terms of life imprisonment for first-degree murder, twenty years for aggravated assault, and five years for firearm enhancement. Johnson appealed.

ISSUES

Whether (1) the trial court erred in denying Johnson's motion for a new trial; and (2) the jury's verdict was against the overwhelming weight of evidence.

HOLDING

(1) Because the trial court did not abuse its discretion, a new trial was not warranted. (2) Because the jury is the ultimate finder of fact and is free to accept or reject all or some of the testimony given by each witness, and because the jury was properly instructed about the co-defendant's testimony, the verdict was not against the overwhelming weight of evidence. Therefore, the Court of Appeals affirmed the judgment of the Washington County Circuit Court.

Affirmed - 2017-KA-00313-COA (Aug. 14, 2018)

Opinion by Judge Tindell

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

Benjamin Allen Suber, George T. Holmes, & Erin E. Briggs (Pub. Def. Office) for Appellant - Barbara Wakeland Byrd (Att'y Gen. Office) for Appellee

Briefed by [Karen Lott](#)

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