

MISSISSIPPI SUPREME COURT DECISIONS – FEBRUARY 15, 2018***SUPREME COURT - CIVIL CASES*****MISS. BAPTIST HEALTH SYS. V. HARKINS****CIVIL - MEDICAL MALPRACTICE**

CIVIL PROCEDURE - MEDICAL DEFENDANTS - PERMISSIVE JOINDER - Where two medical defendants fall within the same category for venue, Miss. Code Ann. § 11-11-3(3) does not contain language preventing permissive joinder pursuant to Miss. R. Civ. P. 20(a), and the plain language does not prevent the application of Miss. R. Civ. P. 82(c)

CIVIL PROCEDURE - LEGISLATIVE INTENT - DEFENDANT LIMITATIONS - With Miss. Code Ann. § 11-11-3(3), the Legislature would have limited the defendants in the instant case to the county in which respective alleged act or omissions took place if the Legislature wanted to so limit

FACTS

On March 11, 2013, Dianne Harkins arrived at the Baptist Memorial Center emergency room in Leake County, complaining of right flank pain. With a decline in blood pressure and an increase in heart rate, Harkins was admitted to the hospital in the care of Dr. David Moody. After Dr. Moody's initial evaluation of Harkins, Dr. Moody was notified of Harkins's declining condition. Due to Harkins declining state, Dr. Moody ordered Harkins to be transferred via air ambulance to Mississippi Baptist Medical Center in Jackson. Upon arrival to Mississippi Baptist Medical Center, Harkins was admitted to the emergency room, then later admitted to the hospital's critical care unit with acute, respiratory failure, hypotension, sepsis, septic shock, acidemia, pneumonia, renal failure syndrome, and urethral stone with urosepsis. Harkins developed more complications which lead to the development of gangrene in her hands and feet. Consequent to developing gangrene, Harkins hands and feet were amputated. On April 29, 2014, Harkins filed a medical malpractice suit, and Harkins's husband brought suit for loss of consortium. In January 2015, Dr. Moody and Madden Medical Clinic filed a motion to dismiss or, alternatively, to sever and transfer venue to Leake County. Baptist Memorial Center and Mississippi Baptist Medical Center filed the same. In their respective motions, each party cited Miss. Code Ann. § 11-11-3(3), arguing Leake County is the only proper venue. The Hinds County Circuit Court denied these parties' motions to dismiss or, alternatively, to transfer venue. The collective defendants filed interlocutory appeals.

ISSUES

Whether (1) under Miss. Code Ann. § 11-11-3(3), the malpractice allegations against all the medical defendants may be brought in Hinds County, when the alleged malpractice occurred in Hinds County and in Leake County; and (2) Miss. Code Ann. § 11-11-3(3) prevents joinder.

HOLDING

(1) Because Miss. Code Ann. § 11-11-3(3) plainly and unambiguously provides that where both defendants are private medical defendants and where an act or omission occurred in both counties forming an indivisible injury, both counties satisfy the single category defined within this statute. As such, the trial court did not err. (2) Because Miss. Code Ann. § 11-11-3(3) is read in harmony with Miss. R. Civ. P. 20 & 82(c), the Supreme Court held that the plain language of the statute allows permissive joinder. Therefore, the Supreme Court affirmed and remanded the judgment of the Hinds County Circuit Court.

DISSENT

Justice Coleman argued the majority departed from the law the Legislature set forth in Miss. Code Ann. § 11-11-3(3). Justice Coleman asserted that the word “only” in Miss. Code Ann. § 11-11-3(3) manifests the intention that the word “county” hold singular form, rather than plural.

Affirmed & Remanded - 2016-IA-00398-SCT (Feb. 15, 2018)

En Banc Opinion by Justice Chamberlin - Dissent by Justice Coleman

Hon. Winston L. Kidd (Hinds County Circuit Court)

D. Collier Graham, Jr., Charles E. Cowan, Ginny Y. Kennedy, & C. Maison Heidelberg for Appellants - Michael T. Jaques & Bobby L. Dallas for Appellees

Consolidated with:

Affirmed & Remanded - 2016-IA-00399-SCT (Feb. 15, 2018)

En Banc Opinion by Justice Chamberlain - Dissent by Justice Coleman

Hon. Winston L. Kidd (Hinds County Circuit Court)

D. Collier Graham Jr., Charles E. Cowan, Ginny Y. Kennedy, & C. Maison Heidelberg for Appellants - Michael T. Jaques, Bobby L. Dallas, & Jennifer P. Burkes for Appellees

Briefed by [Charlotte Cooper](#)

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CITY OF GULFPORT V. DEDEAUX UTIL. CO.

CIVIL - EMINENT DOMAIN

REMEDIES - INTEREST RATES - DETERMINATION - Pursuant to Miss. Code Ann. § 11-27-19, a trial court is authorized to determine the applicable interest rate

REMEDIES - INTEREST RATES - JUDGMENTS - Under Miss. Code Ann. § 75-17-7, rates of interest and rates of return are not synonymous terms

REMEDIES - INTEREST RATES - MARKET RATES - A two or three-percent interest rate might sometimes be fair and reasonable, while, at other times, market conditions and other relevant factors might require the trial judge to set a higher rate

FACTS

In 1996, the City of Gulfport filed an eminent domain complaint against Dedeaux Utility Co. After a series of appeals and cross appeals, the case was tried for a third time in 2016. The jury awarded Dedeaux \$7,082,778 and \$981,203 plus interest. The two amounts represented the fair market value of Dedeaux as of 1996, when the complaint was filed, and the fair market value of tangible assets added to Dedeaux from 1996, to 2004, when Gulfport took physical control. Gulfport appealed, and the Mississippi Supreme Court affirmed on all issues except interest. The Supreme Court determined that Miss. Code Ann. § 75-17-7 applied, which charged the trial court to set an interest rate. In response to the 2016 remand, Dedeaux filed a motion to set an interest rate. At the hearing, Dedeaux argued for rates higher than market interest rates. Dedeaux offered only one exhibit in support of its argument. The exhibit was used to argue that if an eight-percent rate of interest was used, it would amount to a 4.894 percent rate of return over the entire time period. Dedeaux offered no legal authority to the trial court or to the Supreme Court to support its argument that courts should enter the speculative investment domain of rates of return on stocks and real estate to supplant the required statutory language of interest rates. Gulfport offered the only witness at the hearing, Gary Wayne Kelly, Ph.D. Kelly testified and offered as part of an exhibit the average long-term financing rates for Gulfport between 1996 and 2004, which was “right about four percent – 3.9 to 4.04.” Subsequently, the trial court, sua sponte, marked three documents from the Public Employees’ Retirement System of Mississippi (PERS) – a brochure, the mission statement, and a graph – for the record. Based on the rates of return found in those documents, the trial court ordered interest be paid at a rate of 7.75 percent. Gulfport appealed.

ISSUE

Whether the trial judge erred in considering the definition of interest rate to encompass evidence of rates of return.

HOLDING

Because the trial court rejected the only admissible evidence presented on interest rates and found the rate of return on a state-controlled interest fund to be pertinent to determine the rates of interest, the trial court erred in its consideration. Therefore, the Supreme Court reversed and remanded the judgment of the Harrison County Special Court of Eminent Domain.

DISSENT

Justice King argued that given the latitude and discretion afforded to trial courts, interest rates are one of many factors a trial court may consider. Accordingly, he would have affirmed the Harrison County Special Court of Eminent Domain.

Reversed & Remanded - 2016-CA-01270-SCT (Feb. 15, 2018)

Opinion by Justice Barnes - Dissent by Justice King

Hon. William R. Barnett (Harrison County Special Court of Eminent Domain)

Jeffrey S. Bruni, Dustin Eugene Uselton, & Margaret E. Murdock for Appellant - Peter C. Abide & Joseph Walter Gill for Appellee

Briefed by [Katie Berry](#)

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ILL. CENT. R.R. CO. V. OAKES

CIVIL - PERSONAL INJURY

PERSONAL INJURY - FEDERAL EMPLOYERS - DOUBLE RECOVERY - Nothing in the Federal Employers' Liability Act entitles the plaintiff to more than one recovery for his damages

PERSONAL INJURY - DAMAGES - CONTRIBUTION - A plaintiff may recover his/her full amount of damages from one defendant, which places the burden on the defendant to seek contribution from other nonparty tortfeasors

CONFLICT OF LAWS - FEDERAL STATUTES - COMMON LAW - Only to the extent of explicit statutory alterations, is the Federal Employers' Liability Act an avowed departure from the rules of the common law

FACTS

Clara Hagan filed a complaint, as the representative of the estate of Bennie Oakes, against Illinois Central Railroad Co. under the Federal Employers' Liability Act in the Warren County Circuit Court. The complaint sought to recover damages for personal injuries and/or death sustained by Oakes while he was employed by Illinois Central and while engaging in interstate commerce. Oakes had been an employee for over forty years and was exposed to asbestos on an almost daily basis throughout this time. Oakes had a long list of serious cancers and health concerns that the complaint alleged were caused as a result of negligence by Oakes's employer, Illinois Central. The first trial resulted in a hung jury, but a second jury found for Oakes and awarded \$250,000 in damages. However, the jury also apportioned fault, finding that Illinois Central was twenty percent at fault, while Oakes was eighty percent at fault for his injuries. The circuit court adjusted the damages accordingly and Illinois Central was ordered to pay \$50,000 plus eight percent interest. Illinois Central filed a motion to have the damages further reduced based on the discovery that Hagan had already received \$65,000 in payments from asbestos trusts for Oakes's injury and death. This motion was denied, and Illinois Central appealed. The Court of Appeals held that the collateral source rule did not allow for Illinois Central to avoid payment of damages based on compensation to the plaintiff from a third-party source that was not part of the action. However, a dissent issued by another member of the Court of Appeals prompted Illinois Central to file a petition for writ of certiorari, which the Mississippi Supreme Court granted.

ISSUE

Whether Illinois Central was entitled to a setoff of the jury verdict based on Oakes's or Hagan's receipt of settlement funds from an asbestos bankruptcy trust.

HOLDING

Because Oakes had already been compensated beyond the full amount of the damages caused by Illinois Central by a third party (who shared fault for the same injuries), Illinois Central was entitled to a pro tanto set-off for the damages paid by the third party. Further, the Mississippi Supreme Court held that the Court of Appeals in this case misapplied *Norfolk & Western Railway Co. v. Ayers*, 538 U.S. 135 (2003) and ignored federal caselaw directly on the issue. Therefore, the Supreme Court reversed and remanded the judgment of the Warren County Circuit Court.

DISSENT

Justice King argued that Illinois Central should not be entitled to a pro tanto setoff because it failed to demonstrate why the third party at fault should be responsible for the damages. He further argued that allowing a setoff for settlement recoveries on behalf of a non-railroad tortfeasor was inconsistent with the intent of the Federal Employers' Liability Act.

Reversed & Remanded - 2015-CT-00644-SCT (Feb. 15, 2018)

En Banc Opinion by Justice Coleman - Dissent by Justice King

Hon. Isadore W. Patrick Jr. (Warren County Circuit Court)

Glenn F. Beckham & Harris Frederick Powers III for Appellant - Henry Dean Andrews Jr., Timothy W. Porter, Patrick Malouf, & John Timothy Givens for Appellee

Briefed by [Sean Grady](#)

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KD HATTIESBURG 1128, INC. V. TURTLE CREEK CROSSING, LLC

CIVIL - CONTRACT

CIVIL PROCEDURE - CONCURRENT JURISDICTION - EQUITABLE CLAIMS - While Miss. Const. art. 6, § 161 provides that circuit courts may transfer equitable matters of mutual accounts to the chancery court, circuit courts and chancery courts enjoy concurrent jurisdiction over such suits

CIVIL PROCEDURE - CORPORATIONS - DERIVATIVE CLAIMS - A claim by a member of a corporation or partnership is not a derivative action on behalf of the partnership if the member seeks to recover for its own injuries, rather than injuries to the corporation or partnership as a whole

FACTS

This action arose from the formation of two separate limited partnerships. The first, Kimco Hattiesburg, L.P., was formed for the purpose of developing "Phase I" of the Turtle Creek Shopping Center, with Target as the anchor tenant. Under the limited partnership agreement, KD Hattiesburg 1128, Inc. was the general partner with a 1% interest, Kimco Developers, Inc. was the Class A limited partner with a 49% interest, and Turtle Creek Crossing, LLC was the Class B limited partner with a 50% interest. The agreement was later amended to transfer half of Turtle Creek's interest to Kimco Developers. Three years later, a second limited partnership, Kimco Hattiesburg II, L.P., was formed to implement "Phase II" of the development, with Kohl's as the anchor tenant [both partnerships, the general partners, and Kimco Developers collectively referenced as "Kimco Defendants"]. The same partnership structure resulted, except that Turtle Creek Commons replaced Turtle Creek Crossing as the Class B limited partner. In 2015, a third party offered to buy both Phase I and Phase II. In response to the offers, Turtle Creek Crossing filed a complaint in circuit court claiming the Kimco Defendants breached their duty of loyalty by (1) marketing the two properties in the aggregate, and conspiring to sell the properties knowing that Turtle Creek Crossing would be the only partner not to receive profits because of the agreement's distribution structure; and (2) commingling the funds of the two limited partnerships into one "Kimco main cash account." The Kimco Defendants responded with a motion to transfer or, alternatively, sever and transfer equitable claims to chancery court, since the predominant claim (an accounting claim) was equitable. The Kimco Defendants also filed a motion to dismiss, arguing the legal claims constituted derivative claims that Turtle Creek Crossing did not have standing to bring on behalf of the partnership. The circuit court denied both motions. The Kimco Defendants filed this interlocutory appeal.

ISSUES

Whether (1) the circuit court had subject-matter jurisdiction over Turtle Creek Crossing's claims; and (2) Turtle Creek Crossing's claims constituted derivative claims on behalf of the partnership.

HOLDING

(1) Because the circuit court and chancery court enjoy concurrent jurisdiction over suits involving mutual accounts, and transfer of such suits to chancery court is discretionary, the circuit court had subject-matter jurisdiction over all of Turtle Creek Crossing's legal and equitable claims. (2) Because Turtle Creek Crossing's theory of liability was that the Kimco Defendants breached their fiduciary duty to Turtle Creek Crossing, and not to the partnership as a whole, its legal claims were not derivative, but constituted a direct action for its own damages. Therefore, the Supreme Court affirmed the judgment of the Lamar County Circuit Court.

Affirmed - 2016-IA-01118-SCT (Feb. 15, 2018)

Opinion by Justice Maxwell

Hon. Anthony Alan Mazingo (Lamar County Circuit Court)

Lisa Anderson Reppeto & Andrew Scott Harris for Appellants - Mark A. Nelson, S. Robert Hammond Jr., & Nicholas Kane

Thompson for Appellee

Briefed by [Daniel Tankersley](#)

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PEDIGO V. ROBERTSON

CIVIL - CONTRACT

CONTRACTS - ARBITRATION AGREEMENT - VALIDITY - In determining the validity of an arbitration agreement, the court considers whether (1) a valid arbitration agreement exists, and (2) the parties' dispute is within the scope of that arbitration agreement

CONTRACTS - ARBITRATION AGREEMENT - VALIDITY - While courts exercise a strong presumption in favor of arbitration and liberally construe arbitration agreements so as to encourage the settlement of disputes, such agreements must be valid, and the disputed claims must fall within the substantive scope of the agreement

CONTRACTS - ARBITRATION AGREEMENT - SCOPE - Arbitration is a matter of contract, and a party is not required to submit to arbitration in any dispute which he has not agreed to submit; thus, as with any other contract, the parties' intentions control

FACTS

Brian Pedigo rented a television from Rent-A-Center in 2012. Pedigo entered into a rental purchase agreement with Rent-A-Center, which included a standard arbitration agreement. When Pedigo failed to make payments on the television, the Rent-A-Center manager, Kristopher Robertson attempted to recover the television. Robertson then discovered that Pedigo had sold it to a pawn shop. Robertson and Rent-A-Center then filed a complaint with the Booneville police in April 2013. Based on the information provided in Rent-A-Center's complaint, an arrest warrant for the theft of rental property was issued, and Pedigo was indicted for defrauding Rent-A-Center. Pedigo was arrested in December 2013. In June 2014, the State dropped the felony charge, ending the prosecution of the criminal matter. Pedigo then filed a civil action claiming that Rent-A-Center filed a false police report leading to his incarceration, amounting to malicious prosecution. Rent-A-Center responded with a motion to compel arbitration pursuant to the arbitration agreement signed in 2012. The Prentiss County Circuit Court found that the arbitration agreement was binding and enforceable under the circumstances in this matter. The circuit judge then stayed the proceedings and compelled arbitration. Pedigo appealed.

ISSUE

Whether the circuit court erred in determining that Pedigo's claim of malicious prosecution fell within the scope of claims covered by the arbitration agreement.

HOLDING

Because the arbitration agreement did not contemplate that Rent-A-Center would file a criminal complaint against a signatory/lessor, causing Pedigo to suffer a criminal indictment and subsequent imprisonment and release without further prosecution, Pedigo's claim of malicious prosecution did not fall within the scope of the arbitration agreement. Accordingly, the circuit court erred when it stayed the proceedings and compelled arbitration of Pedigo's claim. Therefore, the Supreme Court reversed and remanded the judgment of the Prentiss County Circuit Court.

Motion for Rehearing - Denied & Modified at ¶3 & ¶4 (Feb. 15, 2018)

Reversed & Remanded - 2016-CA-00572-SCT (Oct. 26, 2017)

Opinion by Justice Beam

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

Greg E. Beard & Thomas H. Comer Jr. for Appellant - Christopher Daniel Meyer for Appellees

Briefed by [Allison A. Bruff](#)

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RIDGEWAY V. HOOKER

CIVIL - DOMESTIC RELATIONS

CIVIL PROCEDURE - PERSONAL JURISDICTION - DIVORCE - Miss. Code Ann. § 93-5-2(1) limits the chancery court's exercise of personal jurisdiction over the defendant, requiring a joint complaint and either personal service on the defendant or the defendant's entry of appearance by written waiver of process

CIVIL PROCEDURE - JURISDICTION - WAIVER - Insufficiency of process or insufficiency of service of process is waived if it is omitted from a motion in the circumstances described in Miss. R. Civ. P. 12(g) or if it is neither made by a motion under this rule nor included in a responsive pleading or an amendment thereof

JUDICIAL ESTOPPEL - APPELLATE REVIEW - Judicial estoppel must be invoked in the court in which the apparent self-serving contradiction occurred

FACTS

Patrick Ridgeway sought an irreconcilable-differences divorce from Louise Ridgeway (now Louise Hooker). The parties entered into a written agreement, which the Hinds County Chancery Court approved and memorialized in its final judgment of divorce. But after Louise had filed a petition for contempt against Patrick approximately two years later, Patrick moved for relief from the final judgment of divorce pursuant to Miss. R. Civ. P. 60(b)(4), arguing that the judgment was void because the chancery court lacked subject-matter and personal jurisdiction. The chancery court found that it had jurisdiction over the subject matter and over the parties and denied Patrick's Miss. R. Civ. P. 60(b)(4) motion. Patrick appealed.

ISSUES

Whether (1) the chancery court erred by denying Patrick's Miss. R. Civ. P. 60(b)(4) motion because the court lacked subject-matter and personal jurisdiction; and (2) Patrick was estopped from claiming the invalidity of the judgment of divorce.

HOLDING

(1) Because Louise waived any objection to the exercise of personal jurisdiction and Patrick lacked standing to complain of an error of his own creation, the chancery court had proper jurisdiction and the denial of Patrick's Miss. R. Civ. P. 60(b)(4) motion was appropriate. (2) Because judicial estoppel must be invoked in the court in which the apparent self-serving contradiction occurred and because the determination of the court's judicial notice is unnecessary to the

disposition of this case, the Supreme Court declined to address this argument. Therefore, the Supreme Court affirmed the judgment of the Hinds County Chancery Court and dismissed the interlocutory appeal.

Affirmed & Remanded - 2016-CA-00807-SCT (Feb. 15, 2018)

Opinion by Presiding Justice Kitchens

Hon. Patricia D. Wise (Hinds County Chancery Court, First Judicial Dist.)

T. Jackson Lyons & Marc E. Brand for Appellant - John Robert White Jr. & Pamela Guren Bach for Appellee

Consolidated with:

Dismissed - 2016-IA-01428-SCT (Feb. 15, 2018)

Opinion by Presiding Justice Kitchens

Hon. Patricia D. Wise (Hinds County Chancery Court, First Judicial Dist.)

T. Jackson Lyons & Marc E. Brand for Appellant - John Robert White Jr. & Pamela Guren Bach for Appellee

Briefed by [Mary-Katherine Black](#)

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SUPREME COURT - ORDERS

IN RE MISSISSIPPI RULES OF APPELLATE PROCEDURE

COURT ORDER

ORDER

This en banc Order by the Mississippi Supreme Court partially grants and partially denies a motion by the Advisory Committee on Rules. The Committee moved to adopt a voluntary appellate mediation pilot program as Rule 50 of the Mississippi Rules of Appellate Procedure. This addition to the Rules will become effective on April 2, 2018.

[Exhibit A](#), referenced in and attached to the Order, includes the full text of Rule 50, as adopted.

Granted in Part; Denied in Part 89-R-99027-SCT (Feb. 12, 2018)

En Banc Order by Presiding Justice Randolph

Briefed by [Allison A. Bruff](#)

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JORDAN V. STATE

COURT ORDER

FACTS¹

Montrell Jordan was convicted of depraved-heart murder and was sentenced to life in prison. During his trial, Jordan was represented by Akillie Malone and Antwayn Patrick. Sometime after trial, Jordan discovered Malone was romantically involved with the State's lead investigator on his case. The investigator, Officer Oliver, provided pretrial and trial testimony totaling approximately 100 hundred pages of transcript. Jordan's post-conviction relief application included an affidavit from Patrick, which stated that neither he nor Malone ever informed Jordan of the romantic

¹ These facts were summarized from Presiding Justice Kitchens's written objection, as the order included minimal background.

relationship between Jordan’s defense attorney and the State’s investigator/witness. The Supreme Court denied Jordan’s first PCR application in one sentence stating Jordan failed to meet the *Strickland* standard. Jordan then raised the same issue in federal habeas corpus proceedings. A federal magistrate judge found that the *Strickland* standard was applicable—rather than the *Cuyler* test—and that Jordan’s claim failed because he did not make any showing of resultant prejudice from Malone’s deficient performance. The federal district court then adopted the magistrate’s opinion.

ORDER

Because Jordan’s application for leave to file for post-conviction relief was filed outside the three-year statute of limitations and his claims were barred by res judicata, the Supreme Court found that Jordan’s claims were time, waiver, and successive-writ barred. Therefore, the Supreme Court ordered Jordan’s application denied.

OBJECTION

Presiding Justice Kitchens argued that Jordan’s claim involves a violation of a fundamental right and has an arguable basis for the claim. Even though the claim is time-barred, successive-writ-barred, and barred under res judicata, Presiding Justice Kitchens would have granted Jordan’s PCR application because it meets the fundamental-rights exception to those procedural bars. Further, Presiding Justice Kitchens quoted the Mississippi Supreme Court in *Bevill v. State*, which noted that a sufficiently egregious instance of ineffective assistance of counsel may warrant an exception to the PCR procedural bars and permit judicial review. He would find that this case falls within that category and that Malone’s conflict of interest was presumptively prejudicial and denied Jordan the constitutional guarantees of a fair trial with effective assistance of counsel.

Ordered - 2014-M-01731 (Feb. 14, 2018)

En Banc Order by Presiding Justice Randolph Objection by Presiding Justice Kitchens

Briefed by [Addison K. Watson](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – FEBRUARY 13, 2018

COURT OF APPEALS - CIVIL CASES

BOOTH V. S. HENS, INC.

CIVIL - PERSONAL INJURY

RESPONDEAT SUPERIOR - SCOPE OF EMPLOYMENT - ACTIONS - When actions are not performed as a means to accomplish the purpose of employment, the actions fall outside the course and scope of employment

NEGLIGENCE - EMPLOYMENT - DUTY TO SUPERVISE - Specific evidence of an employer’s actual or constructive knowledge of an employee’s dangerous or violent tendencies is necessary in order to create a genuine issue of material fact on an improper training or supervision theory of liability

FACTS

Wayne Booth was employed as a truck driver for Whitestone Trucking, which was an independent-contract hauler for products made by Southern Hens. On October 30, 2012, Booth, working as a truck driver for Whitestone, went to Southern Hens to pick up a trailer. After checking in and hooking up his trailer, he went to the shipping office to wait on paperwork. Jerome Caldwell, an employee of Southern Hens, grabbed Booth in a “bear hug” around his midsection. Booth alleges that Caldwell slung him against some boxes and pushed him through a doorway onto a stack of pallets. Booth claimed that Caldwell’s actions caused serious injuries to his back that required treatment and rendered him unable to return to work. On April 8, 2013, Booth sued Southern Hens alleging negligence and failure to supervise. Specifically, he claimed that Southern Hens failed to exercise reasonable care and control over its employees. In May 2016, Southern Hens filed a motion for summary judgment. The circuit court found there was no genuine issue of material fact for any negligence claim, and summary judgment was granted. Booth appealed.

ISSUES

Whether there was a genuine issue of material fact about whether (1) Caldwell was acting in the course and scope of his employment during the incident; and (2) Southern Hens failed to supervise its employees, thereby breaching a duty, which caused injury to Booth.

HOLDING

(1) Because Caldwell was a laborer in the shipping department for Southern Hens, bear-hugging and shoving a truck driver was outside the course and scope of his employment. Further, unauthorized horseplay and physical assault are prohibited by Southern Hens employment rules. (2) Because Southern Hens did not have actual or constructive knowledge of any dangerous tendencies of Caldwell, Southern Hens had no reason to anticipate his violent actions. Caldwell also signed an orientation checklist, stating he understood that horseplay was not tolerated, and the general safety rules of Southern Hens specifically prohibited fighting, physically threatening others, horseplay, and practical joking. Therefore, the Court of Appeals affirmed the judgment of the Jones County Circuit Court.

Affirmed - 2016-CA-01068-COA (Feb. 13, 2018)

Opinion by Judge Barnes

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

Orvis A. Shiyou Jr. for Appellant - Mark Edward Norton for Appellee

Briefed by [Caroline Loveless](#)

[Click here to view the full opinion](#)

CLC OF BILOXI, LLC V. MISS. DIV. OF MEDICAID

CIVIL - STATE BOARDS & AGENCIES

MEDICAID - REIMBURSEMENTS - ALLOCATIONS - Medicaid's determinations of how to allocate funding are entirely within its discretion

MEDICAID - REIMBURSEMENTS - MEDICAL ASSISTANCE - Medical assistance for the aged means payment of part or all of the cost of a specifically defined scope of care and services

MEDICAID - DUE PROCESS REQUIREMENTS - ADMINISTRATIVE HEARINGS - The minimum procedural due-process requirements an administrative board must afford parties are notice and an opportunity to be heard

FACTS

CLC of Biloxi entered into a contract with the Miss. Div. of Medicaid to provide nursing home services. The costs could be either billed directly to Medicaid or filed as an annual cost report that calculated a per diem cost of care for Medicaid patients. In May 2009, CLC filed its annual cost report for allowable expenses for 2008. After a review of the cost report, Medicaid decided not to reimburse CLC for the respiratory therapists' salaries. On August 2, 2010, CLC filed an amended cost report and sought reimbursement for the respiratory therapists' salaries as a direct care expense. On January 12, 2011, the Medicaid amended desk review allowed the salaries to be used to calculate the CLC's per diem. However, Medicaid discovered the improper classification made by CLC and issued a second amended desk review on March 2, 2012, and removed the salaries from the calculation. Medicaid then sought to recoup the \$82,000 paid to CLC for the inclusion of the respiratory therapists' salaries. CLC requested an administrative appeal, which Medicaid denied. Upon denial, CLC requested an administrative hearing, where the hearing officer recommended—and the Medicaid executive director affirmed—the disallowance. On October 23, 2013, CLC filed a complaint in chancery court for breach of contract. Medicaid filed a motion to dismiss the complaint and challenged the chancery court's jurisdiction to hear administrative appeals from Medicaid. The case was stayed until the Mississippi Supreme Court affirmed the jurisdiction of the chancery court over appeals from Medicaid. On March 29, 2016, the chancery court affirmed Medicaid's final decision that language in the State Medicaid Plan did not include respiratory therapists within those categories of therapists that were allowed to receive reimbursement for services. Also, the chancery court found that

CLC did not fall within the categories of medical facilities that were allowed a per diem reimbursement for respirator therapists' salaries. CLC appealed.

ISSUES

Whether (1) Medicaid was correct when it denied reimbursement; (2) Medicaid's prohibition of respiratory therapists in small and large nursing facilities violated the freedom of choice provision in Miss. Code Ann. § 43-13-5; and (3) CLC's due-process rights were violated because Medicaid was allowed to recoup the erroneous payments.

HOLDING

(1) Because Medicaid did not have a statutory requirement to provide funds for respiratory therapy, and since CLC did not fall into any of the three types of long-term care facilities to which Medicaid did provide respiratory funding, it was correct to deny reimbursement of the respiratory therapists' salaries. (2) Because Medicaid patients had the choice to seek care where expenses were reimbursed, Miss. Code Ann. § 43-13-5 was not violated. (3) Because CLC was afforded all of the due-process protections by Medicaid's administrative process and by the courts, no due-process violation occurred. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Chancery Court.

Affirmed - 2016-CC-01034-COA (Feb. 13, 2018)

Opinion by Judge Fair

Hon. Patricia D. Wise (Hinds County Chancery Court, First Judicial Dist.)

James Ray Mazingo, Lydia Quarles, & Horace Hunter Twiford IV for Appellant - Janet McMurtray & Laura L. Gibbes for Appellees

Briefed by [Sarah Raben](#)

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GIPSON V. JACKSON

CIVIL - DOMESTIC RELATIONS

FAMILY LAW - CHILD SUPPORT - MODIFICATION - Pursuant to Miss. Code Ann. § 43-19-103, factors considered in the modification of a divorce decree regarding child support include: (1) increased needs caused by advanced age and maturity of the children, (2) increase in expenses, (3) inflation factor, (4) the relative financial condition and earning capacity of the parties, (5) the physical and psychological health and special medical needs of the child, (6) the health and special medical needs of the parents, both physical and psychological, (7) the necessary living expenses of the father, (8) the estimated amount of income taxes that the respective parties must pay on their incomes, (9) the free use of residence, furnishings, and automobiles, and (10) any other factors and circumstances that bear on the support as shown by the evidence

FAMILY LAW - CHILD SUPPORT - APPELLATE REVIEW - When a chancellor makes a ruling without specific findings of fact and a party raises the issue of the amount of child support awarded, the appellate court will send the issue back to the chancery court for the mandatory specific findings of fact as to why the chancellor deviated from the guidelines

FACTS

During the course of Lacedric D. Gipson's marriage, Gipson fathered children with two other women, including Stephanie Jackson. Jackson and Gipson's son, D.J., was born in 2008 and a custody order was granted in September 2013, which granted custody to Jackson with a visitation order and child support to Gipson. Jackson and Gipson shared the financial burden of D.J.'s medical bills equally. D.J. was on Medicaid, and the agreement stated that once public assistance was no longer available Gipson was required to obtain private medical insurance for D.J. Jackson obtained private insurance to cover D.J.'s bills and requested that Gipson add D.J. to his insurance for cost effectiveness reasons. Gipson forgot to obtain this insurance and refused to pay his required half of D.J.'s provided medical bills. Jackson filed a complaint for contempt and child support modification, as well as a modification of a prohibition on romantic

overnight guests, not connected by blood or marriage, in the home when D.J. was present. Gipson filed a counter-petition for contempt and modification as well. Both parties were found in contempt and incarcerated until the issues surrounding findings of contempt were resolved. Jackson was ordered to have her boyfriend move out of the home before she was released from custody, even though they were married that day. Gipson was ordered to pay the outstanding share of D.J.'s medical bills. Gipson appealed.

ISSUES

Whether the chancellor (1) erred in ordering Gipson to pay \$696.99 to Jackson for D.J.'s medical bills; and (2) failed to make specific findings on the record, as required for a modification of child support, in spite of increasing the order by \$200.

HOLDING

(1) Because Gipson offered no authority for his claim that the trial court ordered him to pay back medical bills without substantial and credible evidence, the issue was procedurally barred from consideration. Further, even if the issue was not procedurally barred, the Court of Appeals would have found the issue without merit because the original custody order required Gipson to pay half of D.J.'s medical bills and Jackson provided extensive records of the bills. (2) Because the increase in child support order was based on speculative income and there were no actual findings of fact regarding Gipson's ability to pay an increased child support order, the Court of Appeals found the chancellor's findings insufficient to support the increase. Therefore, the Court of Appeals affirmed in part, and reversed and remanded in part, the judgment of the Tippah County Chancery Court.

Affirmed in Part; Reversed & Remanded in Part - 2016-CA-01440-COA (Feb. 13, 2018)

Opinion by Judge Westbrook

Hon. Glenn Alderson (Tippah County Chancery Court)

Randolph Walker for Appellant - B. Sean Akins for Appellee

Briefed by [Nikki Breeland](#)

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STATE V. STAFFORD

CIVIL - OTHER

CONSTITUTIONAL LAW - DUE PROCESS - VIOLATION - A due-process violation occurs where a party is not allowed a full and complete hearing before being deprived of life, liberty, or property; absent the infringement of a significant constitutional right, there can be no deprivation of constitutional due process

ADMINISTRATIVE LAW - PROCEDURAL REQUIREMENTS - APPELLATE REVIEW - If the Mississippi Department of Corrections refuses to follow its own administrative review procedures, then its decision is by definition arbitrary and capricious

FACTS

Roy Stafford, an inmate in the custody of the Mississippi Department of Corrections (MDOC), is serving a life sentence plus ten years for murder and aggravated assault. A rule violation report (RVR) was issued against Stafford for a threatening statement he made to another inmate. Five days later, he received notice that a disciplinary hearing would be held the following day. However, due to case overload, the hearing was not held for two months. Stafford was not given notice of the rescheduled hearing. At the disciplinary hearing, Stafford admitted to the rule violation and was found guilty by the hearing officer. He received a thirty-day loss of visitation, phone, and canteen privileges. Stafford appealed the decision to MDOC's administrative remedy program, claiming a violation of due process as a result of the failure to provide him twenty-four-hours' notice of the disciplinary hearing. Stafford's appeal was denied, and he subsequently filed a petition for judicial review in the Circuit Court of Sunflower County. The circuit court found Stafford's requests for declaratory judgment against individual MDOC officials and payment of court costs and fees

without merit. The circuit court also noted that prison officials, by law, cannot retaliate against or harass prisoners for exercising their constitutional rights. With regard to his due-process claim, the circuit court held that MDOC violated Stafford's statutory due-process rights by failing to adhere to its policies and procedures when it failed to give twenty-four-hours' notice of the hearing. The circuit court reversed the MDOC's decision and ordered the RVR to be expunged from Stafford's prison record. The MDOC appealed.

ISSUES

Whether (1) Stafford's constitutional due-process rights were violated; and (2) the circuit court erred when it held that Stafford's statutory due-process rights had been violated due to the MDOC's failure to follow its administrative procedures.

HOLDING

(1) Because there was no infringement of a significant constitutional right, there was no violation of the Stafford's constitutional due-process rights. (2) Because Stafford was present at the hearing, acknowledged the allegations set forth in the RVR, and admitted the rule violation, his statutory due-process rights were not violated. Therefore, the Court of Appeals reversed the judgment of the Sunflower County Circuit Court.

Reversed & Remanded - 2016-CA-01331-COA (Feb. 13, 2018)

Opinion by Presiding Judge Griffis

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

Anthony L. Schmidt Jr. for Appellant - *Pro se* for Appellee

Briefed by [Maggie Vinzant](#)

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COURT OF APPEALS - POST-CONVICTION RELIEF

BIBBS V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - INEFFECTIVE ASSISTANCE OF COUNSEL - BURDEN - To prove ineffective assistance of counsel, a claimant must show: (1) his counsel's performance was deficient, and (2) the deficient performance prejudiced his defense

FACTS

Douglas Bibbs pled guilty to armed robbery on June 21, 2013, and he was sentenced to serve twenty years in the custody of the Mississippi Department of Corrections, with five years suspended and five years of post-release supervision. On October 28, 2015, Bibbs filed a motion for post-conviction relief (PCR), which the trial court summarily dismissed. Bibbs appealed.

ISSUE

Whether the trial court erred in summarily dismissing Bibbs's PCR motion concerning his claim that he had ineffective assistance of counsel.

HOLDING

Because Bibbs did not raise any issue regarding the voluntariness of his plea, illustrate that a lesser charge not being included was prejudicial, or offer any evidence concerning mental status, he failed to show that his counsel's performance was deficient and that the alleged deficiency prejudiced his defense. Therefore, the Court of Appeals affirmed the judgment of the Pearl River County Circuit Court.

Affirmed - 2015-CP-01872-COA (Feb. 13, 2018)

Opinion by Judge Griffis

Hon. Anthony Alan Mozingo (Pearl River County Circuit Court)

Pro Se for Appellant - Alicia Marie Ainsworth (Att’y Gen. Office) for Appellee

Briefed by [D. Hunter V. Robertson](#)

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BROWN V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - PLEA PETITION - VOLUNTARY & INTELLIGENT - A guilty plea is deemed voluntary and intelligent only where the defendant is advised concerning the nature of the charge against him and the consequences of the plea

POST-CONVICTION RELIEF - INEFFECTIVE ASSISTANCE OF COUNSEL - BURDEN - To prove an ineffective-assistance-of-counsel claim, movant, must show by a preponderance of the evidence that (1) his counsel’s performance was deficient and (2) but for the deficiencies, the trial court outcome would have been different

POST-CONVICTION RELIEF - GUILTY PLEA - WAIVER TO CHALLENGE EVIDENCE - A valid guilty plea waives a defendant’s right to challenge the sufficiency of State’s evidence

FACTS

In 2014, Nicholas Brown pled guilty to two counts of possession of a Schedule II controlled substance and requested to enter a drug-court program. The circuit court accepted Brown’s request, withheld acceptance of his guilty plea, and placed him on non-adjudicated probation. In 2015, Brown violated the terms and conditions of the drug-court program. The circuit court revoked Brown’s non-adjudicated status and accepted his guilty plea. Brown was sentenced to twenty-four years of incarceration. He later filed several post-conviction relief motions that were dismissed by the circuit court. Brown appealed.

ISSUES

Whether Brown’s (1) guilty plea was involuntary; (2) trial counsel was ineffective; (3) search warrant was obtained illegally; and (4) guilty plea was inadequate.

HOLDING

(1) Because the record clearly indicated Brown was informed of the nature of the charges against him and the consequences of his plea, the involuntary guilty plea claim was without merit. (2) Because Brown failed to submit any evidence to the trial court to suggest that his lawyer’s representation was deficient, Brown did not show good cause, and the ineffective counsel claim was without merit. (3) Because Brown pled guilty, and because a valid guilty plea waived his right to challenge the sufficiency of the State’s evidence, Brown was procedurally barred from challenging the sufficiency of the warrant. (4) Because Brown was informed of his constitutional rights before and during his guilty plea, and he informed the trial court he was satisfied with his attorney, his guilty plea was not invalid. Therefore, the Court of Appeals affirmed the judgment of the Simpson County Circuit Court.

Affirmed - 2016-CP-00600-COA (Feb. 13, 2018)

Opinion by Judge Westbrook

Hon. Eddie H. Bowen (Simpson County Circuit Court)

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

Briefed by [William L. Moorer](#)

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EVANS V. STATE

CIVIL - POST-CONVICTION RELIEF

CRIMINAL - ILLEGAL SENTENCE - STATUTORY GUIDELINES - If a defendant's sentence falls within the statutory guidelines, that sentence is legally imposed

CRIMINAL - INEFFECTIVE ASSISTANCE OF COUNSEL - EVIDENCE - A defendant's claim of ineffective assistance of counsel must be supported by an affidavit or any other evidence besides the defendant's own assertion

FACTS

In 2001, Curtis Evans was indicted on one count of armed robbery and one count of burglary. He pled guilty in 2002 and was sentenced to sixteen years on the armed robbery count in the custody of the MDOC, with eight of those years being suspended and eight to serve, followed by three years of post-release supervision (PRS). He was sentenced to seven years on the burglary count, and that sentence was to run concurrently with count one. While on PRS, Evans was arrested for robbery and indecent exposure in April 2010. His PRS was revoked, and he was sentenced to serve his original sentence in MDOC custody. Evans filed his first post-conviction relief (PCR) motion in 2013. He filed a second PCR motion in November 2016, which was denied in 2017. Evans appealed.

ISSUES

Whether (1) Evans received an illegal sentence; (2) the circuit court did not advise him that he was waiving certain constitutional rights by pleading guilty; (3) he was denied effective assistance of counsel; and (4) the sentencing order discussing the terms of probation was void, because it did not contain his signature or the signature of a field officer.

HOLDING

(1) Because Evans's sentence for the armed robbery—along with a concurrent sentence for burglary—fell within the statutory guideline, his sentence was legally imposed. Furthermore, Evans failed to raise this issue in his PCR motion, so it was procedurally barred on appeal. (2) Because Evans confirmed that he signed a document waiving his right to a preliminary probation-revocation hearing, his assertion lacked merit. (3) Because Evans's claim of ineffective assistance of counsel was not supported by affidavits or any other evidence besides his, Evans was not denied effective assistance of counsel. (4) Because Evans failed to raise the issue with his sentencing order in his PCR motion, he was procedurally barred from raising this on appeal. Even so, there was no error in the suspension of Evans's PRS and imposition of his original sentence as an omitted signature was a simple oversight and did not equate to an illegal revocation of a sentence. Therefore, the Court of Appeals affirmed the judgment of the Harrison County Circuit Court.

Affirmed - 2017-CP-00442-COA (Feb. 13, 2018)

Opinion by Judge Westbrooks

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

Pro se for Appellant - Katy Taylor Gerber (Att'y Gen. Office) for Appellee

Briefed by [Michael Farese](#)

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GILL V. STATE

CIVIL - POST-CONVICTION RELIEF

CONSTITUTIONAL LAW - GUILTY PLEAS - WAIVER - A knowing and voluntary guilty plea waives the right to appeal constitutional violations, including the right against double jeopardy, the right to speedy trial, the right to appeal sufficiency of an indictment, and the right to assistance of counsel

POST-CONVICTION RELIEF - APPEALS - SCOPE OF REVIEW - An appellant cannot raise issues on appeal that are neither preserved in the record by raising them in the lower court, nor constitutional or jurisdictional in nature

FACTS

Gregory Gill pled guilty to two counts of touching a child for lustful purposes in 2014. In July 2016, Gill filed a petition to vacate his conviction, which the trial court treated as a motion for post-conviction relief. He argued that his right to a speedy trial was violated, ineffective assistance of counsel, and violation of his right against double jeopardy. The trial court denied Gill's motion on the grounds that he had failed to demonstrate that his plea was invalid or his counsel ineffective. Gill appealed.

ISSUES

Whether the trial court erred by (1) failing to find that Gill's right against double jeopardy was violated; (2) failing to find that Gill's guilty plea was invalid because of the prosecution's failure to amend the original indictment to reflect Gill's guilty plea; (3) failing to exclude evidence of his prior convictions that led to a prejudicial result in his sentencing; (4) failing to find ineffective assistance of counsel; and (5) failing to find Gill's right to a speedy trial was violated.

HOLDING

(1) Because the double jeopardy clause only protects defendants against second prosecutions and multiple punishments for the same offense, and because Gill was convicted under two separate sex offender statutes for different offenses, the trial court did not err in finding that Gill's right against double jeopardy was not violated. (2) Because a voluntary guilty plea waives the constitutional right to review the sufficiency of an indictment on appeal, and because Gill did not preserve the issue for review, the trial court did not err in failing to find that Gill's indictment was insufficient. (3) Because a voluntary guilty plea waives any evidentiary issues on appeal, and because the record indicates Gill was informed of the effects caused to Gill's sentence by introducing evidence of his prior convictions, the trial court did not err in failing to exclude evidence of Gill's prior convictions. (4) Because a voluntary guilty plea waives a right to review issues of ineffective assistance of counsel except as it pertains to the plea itself, and because Gill failed to demonstrate by a preponderance of the evidence that his plea was involuntary, the trial court did not err in failing to find ineffective assistance of counsel. (5) Because a voluntary guilty plea waives the constitutional right to a speedy trial, and because Gill did not argue his plea was involuntary, the trial court did not err in failing to find Gill's right to a speedy trial was violated. Therefore, the Court of Appeals affirmed the judgment of the Hancock County Circuit Court.

Affirmed - 2016-CP-01618-COA (Feb. 13, 2018)

Opinion by Judge Carlton

Hon. Christopher Louis Schmidt (Hancock County Circuit Court)

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

Briefed by [D. Kirkwood Palmer](#)

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COURT OF APPEALS - CRIMINAL CASES

CHISM V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - CONVICTION - SUFFICIENT EVIDENCE - Evidence is sufficient to sustain a conviction if after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt

EVIDENCE - PRIOR CONVICTIONS - ADMISSIBILITY - Usually evidence of another crime or prior bad act is not admissible, however, evidence or proof of a prior crime or bad act is admissible where it is necessary to show identity, knowledge, intent, or motive, or to prove scienter

CRIMINAL PROCEDURE - JURY INSTRUCTIONS - CIRCUMSTANTIAL EVIDENCE - A circumstantial evidence case is one where the state is without a confession and wholly without eyewitnesses to the gravamen of the offense charged

FACTS

Adam Chism was found walking out of a basement at a house where police were responding to a triggered alarm. Chism claimed that he was walking by the house where the alarm had sounded, so he walked inside the open basement door to see if anyone needed assistance. He picked up a bag containing an Xbox One console just as the officer approached the basement. A jury found Chism guilty and was sentenced as a habitual offender to life in the custody of the Mississippi Department of Corrections. Chism appealed.

ISSUES

Whether (1) the trial court erred in admitting evidence of Chism's prior burglary conviction into evidence; (2) the trial court erred in refusing a proposed circumstantial-evidence jury instruction; and (3) the jury's verdict was supported by legally sufficient evidence and was in accord with the overwhelming weight of the evidence.

HOLDING

(1) Because the prejudice of admitting Chism's prior convictions did not outweigh the probative value, the trial court did not err in admitting evidence of a prior conviction. (2) Because the proposed jury instructions were irrelevant due to direct evidence being presented, the trial court did not err in rejecting the proposed jury instruction. (3) Because any rational trier of fact could have found the essential evidence of a crime beyond a reasonable doubt, the verdict was legally sufficient. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Circuit Court.

Affirmed - 2016-KA-01404-COA (Feb. 13, 2018)

Opinion by Judge Griffis

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

Phillip Broadhead (Pub. Def. Office) for Appellant - Joseph Scott Hemleben (Att'y Gen Office) for Appellee

Briefed by [Jacob Swatley](#)

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JENKINS V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - JURY INSTRUCTION - LESSER-INCLUDED OFFENSE - A lesser-included offense instruction is authorized if a rational or reasonable jury could find the defendant not guilty of the principal offense in the indictment, but guilty of the lesser-included offense

CRIMINAL PROCEDURE - JURY INSTRUCTION - REVERSIBLE ERROR - If jury instructions fairly announce the law of the case and create no injustice, no reversible error will be found

CRIMINAL PROCEDURE - INEFFECTIVE ASSISTANCE OF COUNSEL - DIRECT APPEAL - An appellate court will rule on the merits on rare occasions where the record affirmatively shows ineffectiveness of constitutional dimensions, or the parties stipulate the record is adequate to allow the appellate court to make finding without consideration of the findings of the trial judge

FACTS

Rodise Jenkins lived in Biloxi, Mississippi with his girlfriend, Hazel Turner. Jenkins and Turner were having a conversation in their home about obtaining a restraining order against Jenkins' ex-wife when Turner's son, Anthony Wheaton, joined the conversation. Jenkins became agitated and no longer wished to discuss the restraining order with Wheaton. Jenkins left through the back door and headed toward his truck. Jenkins grabbed his gun and walked around to the front of the house. Jenkins shot at Wheaton three times, hitting him twice. Jenkins walked up to Wheaton and shot him two more times at close range, and Wheaton later died from the gunshot wounds. Jenkins was convicted of

murder by deliberate design and sentenced to life in custody of the Mississippi Department of Corrections. Jenkins appealed.

ISSUES

Whether (1) the trial court erred in denying a proposed jury instruction on manslaughter; (2) the trial court erred in giving a jury instruction on the use of deadly force; (3) the trial court erred in excluding evidence of the victim's prior convictions; and (4) Jenkins received ineffective assistance of counsel.

HOLDING

(1) Because the lack of an evidentiary foundation and the fact that no reasonable jury could find Jenkins guilty of the lesser-included offense of manslaughter, the trial court did not err in denying a jury instruction on manslaughter. (2) Because the jury instruction as a whole accurately stated the law on deadly force, there was no reversible error. (3) Because Jenkins was not aware of Wheaton's prior convictions, the convictions were irrelevant to Jenkins' state of mind. (4) Because the record could not support an ineffective assistance of counsel claim on direct appeal, Jenkins's claim was dismissed without prejudice. Therefore, the Court of Appeals affirmed the judgment of the Harrison County Circuit Court.

Affirmed - 2016-KA-01527-COA (Feb. 13, 2018)

Opinion by Presiding Justice Griffis

Hon. Christopher Louis Schmidt (Harrison County Circuit Court, Second Judicial District)

Mollie M. McMillin for Appellant - Scott Stuart (Att'y Gen. Office) for Appellee

Briefed by [Jay Michael Patterson](#)

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JOINER V. STATE

CRIMINAL - FELONY

CONSTITUTIONAL LAW - DUE PROCESS - COMPETENCY EXAMINATION - In criminal proceedings, a trial court must order a defendant to undergo a mental examination if, upon its own motion or upon motion of an attorney, the trial court has reasonable ground to believe that the defendant is incompetent to stand trial; the determination of whether a trial court has a reasonable ground to suspect mental incompetency is within the discretion of the trial court

APPELLATE REVIEW - COMPETENCY EXAMINATION - In an appeal for denial of a motion for psychological evaluation, no abuse of discretion is found where there has been no proof presented to the trial judge that such an examination is needed

FACTS

Following an indictment for armed robbery, Christopher Joiner filed a motion to proceed pro se. In his motion, Joiner stated he had asked his appointed attorney for a psychological evaluation; however, he provided no reasoning for the request. Joiner was later appointed new trial counsel and made no further requests for a psychological examination. Joiner refused a plea offer and chose to go to trial. At trial, Joiner again moved for a psychological examination. The motion was denied. Joiner was found guilty and sentenced to life in prison. Joiner appealed.

ISSUE

Whether the trial court erred in denying Joiner a psychological evaluation to determine competency.

HOLDING

Because the actions and testimony of Joiner and his attorney demonstrated competency, and Joiner presented no evidence of a reasonable ground for a psychological examination, the trial court did not err in denying the evaluation request. Therefore, the Court of Appeals affirmed the judgment of the Jackson County Circuit Court.

Affirmed - 2017-KA-00177-COA (Feb. 13, 2018)

Opinion by Presiding Judge Griffis

Hon. Dale Harkey (Jackson County Circuit Court)

George T. Holmes (Pub. Def. Office) for Appellant - Abbie Eason Koonce (Att'y Gen. Office) for Appellee

Briefed by [Marilyn Higdon](#)

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