

MISSISSIPPI COURT OF APPEALS DECISIONS – FEBRUARY 20, 2018***COURT OF APPEALS - CIVIL CASES*****EASTERLING V. EASTERLING****CIVIL - DOMESTIC RELATIONS**

FAMILY LAW – ALIMONY – ADJUSTMENT – An adjustment of alimony can occur if there is an unforeseeable and material change in circumstances occurred since entry of the initial divorce decree

FACTS

Charles Easterling and Lajuana Easterling entered into a divorce agreement, which included monthly alimony payments from Charles to Lajuana. Charles was later terminated from his job in the oil industry; however, he still picked up odd jobs when available. Charles filed a complaint for modification of his alimony, and the chancellor granted the modification. Charles filed a motion to further reduce or eliminate the payments. The motion was denied. Charles appealed.

ISSUE

Whether the chancellor erred in denying Charles's motion to reconsider a judgment that granted a modification of alimony payments.

HOLDING

Because Charles had been consistently paying his alimony payments without issue and was not at risk of repossession or foreclosure, the chancellor did not abuse her discretion when she denied the motion to further reduce the alimony payments. Therefore, the Court of Appeals affirmed the judgment of the Perry County Chancery Court.

Affirmed - 2016-CA-01658-COA (Feb. 20, 2018)

Opinion by Presiding Judge Griffis

Hon. Susan Rhea Sheldon (Perry County Chancery Court)

Phillip Lloyd Londeree for Appellant – S. Christopher Farris for Appellee

Briefed by [Tyler Alcorn](#)

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

HINTON V. LADNER**CIVIL - STATE BOARDS & AGENCIES**

PRISONS – RULE VIOLATIONS – ADMINISTRATIVE REMEDIES – Deference is afforded to the fact-finding role of the administrative agency and the hearing officer's findings

CONSTITUTIONAL LAW – DUE PROCESS – PROTECTED INTERESTS – It is well established that punishment of temporary loss of privileges is not generally considered a constitutionally protected liberty interest

FACTS

While an inmate in the Central Mississippi Correction Facility, Henry Hinton was accused of verbally bribing a corrections officer to obtain a slice of pizza and pursuing a relationship with the same officer. Hinton was found guilty of two rule violations and lost all privileges for one month. Hinton claims he was also punished by being placed in a more restrictive area the following day, a claim the Mississippi Department of Corrections (MDOC) denies. Hinton appealed to the MDOC administrative-remedy program, which concluded there was substantial evidence supporting the rules violations. Hinton appealed to the Rankin County Circuit Court and amended his complaint, complaining his due-process right to notice was violated because his copies of the rule violations were illegible. The circuit court affirmed the MDOC's decision. Hinton appealed.

ISSUES

Whether (1) there was substantial evidence to support the MDOC's decision that Hinton violated MDOC rules against bribery and pursuing a relationship; and (2) Hinton's right to due process was violated.

HOLDING

(1) Because Hinton admitted to writing the note and the note was an attempt to establish an inappropriate relationship with an officer, Hinton failed to prove MDOC's decision was not supported by substantial evidence. (2) Because temporary loss of privileges is not considered a constitutionally protected interest and Hinton was provided a fair and impartial disciplinary hearing, Hinton's right to due process was not violated. Therefore, the Court of Appeals affirmed the judgment of the Rankin County Circuit Court.

Affirmed - 2016-CP-01494-COA (Feb. 20, 2018)

Opinion by Judge Barnes

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

Pro se for Appellant - Anthony Louis Schmidt Jr. for Appellee

Briefed by [Nathan Simpson](#)

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

COURT OF APPEALS - POST-CONVICTION RELIEF

STOKES V. STATE

CIVIL - POST-CONVICTION RELIEF

CRIMINAL LAW – POST-CONVICTION RELIEF – FILINGS – A PCR motion is untimely unless it is filed within three years after the entry of the judgment of conviction

CRIMINAL LAW – POST-CONVICTION RELIEF – EXCEPTIONS – Errors affecting fundamental constitutional rights are exceptions to the procedural bars in the Mississippi Uniform Post-Conviction Relief Act; however, a mere assertion of a constitutional-right violation does not automatically preclude the application of the procedural bars

FACTS

Derrick Stokes pleaded guilty to gratification of lust and exploitation of a child in 2008. Stokes was sentenced to fifteen years for the gratification of lust charge and ten years for the exploitation of a child charge. In 2008 Stokes filed five post-conviction relief (PCR) motions – all unsuccessful. In Stokes's first PCR motion, he alleged that his guilty pleas were involuntary; he received ineffective assistance of counsel; he found newly discovered evidence; and he pleaded guilty based on misrepresentation and duress. Stokes argued that the circuit court erred by accepting his guilty plea without appointing a sign-language interpreter during the plea hearing because Stokes alleged he was legally deaf. Stokes again made the same PCR appeal in 2013. Stokes's third PCR motion was held to be time-barred. Stokes's fourth motion again argued that his guilty pleas were involuntary because of his hearing impairment. Stokes

filed his fifth PCR motion in 2016, more than eight years after his guilty pleas. Stokes again argued that his due-process rights were violated because he was not provided with a sign-language interpreter at the plea hearing. Stokes also claimed that the indictment was void for the omission of the word “feloniously.” The court denied his fifth motion, as well. Stokes appealed.

ISSUES

Whether (1) the circuit court erred in dismissing Stokes’s fifth PCR motion; (2) Stokes was denied due process because of an insufficient indictment; and (3) the circuit court should have appointed a sign-language interpreter during the plea hearing.

HOLDING

(1) Because a PCR motion is untimely unless it is filed within three years after the entry of the judgment of conviction, and an order denying or dismissing a PCR motion is a bar to a second or successive PCR motion, Stokes’s appeal was time barred. (2) Because a mere assertion of a constitutional-right violation does not automatically preclude the application of the procedural bars, Stokes’s appeal does not fall within a procedural exception. (3) Because the circuit court had ruled on the remaining matter incident to Stokes’s earlier PCR motion, the court declined to address it. Therefore, the Court of Appeals affirmed the judgment of the Madison County Circuit Court.

Affirmed - 2017-CP-00045-COA (February 20, 2018)

Opinion by Judge Westbrook

Hon. John Huey Emfinger (Madison County Circuit Court)

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

Briefed by [Andrew P. Cicero, III](#)

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

COURT OF APPEALS - CRIMINAL CASES

BELL V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE – APPEAL – LINDSEY – When appellate counsel does not believe there are any issues arguable on appeal, counsel must serve a brief in compliance with Rule 28 that includes a thorough review of the record to determine if there are any arguable issues and allow the client to file a pro se brief, and if the client does so, counsel must file supplemental briefing on the issue

FACTS

Otis Davis owned a 1998 Grand Prix, which he parked on the side of Thompson Road near his job site. One morning Otis’s daughter, Oeshia Davis, was driving by Thompson Road when she noticed another vehicle parked next to her father’s. Oeshia’s mother, Mary Turner, also showed up to the scene, where they both confronted the passengers in the other vehicle. The two men exited Otis’s vehicle, stated they were sent by “Mike” and then drove away shortly after. Oeshia called the police. Upon inspection of the vehicle, a hammer was found inside and there was damage to the steering column. Mary identified Ernest Bell in a photo lineup, and based on the license plate number and description of the vehicle, Bell was found and arrested. Bell waived his *Miranda* rights. Bell testified at trial that he was simply stopping to see if the car was for sale; however, he admitted that the car had no for sale sign on it. The jury returned a guilty verdict, and Bell was sentenced to five years in the custody of the Mississippi Department of Corrections. Bell filed a motion for a judgment notwithstanding the verdict or, alternatively, a new trial, which was denied. Bell appealed.

ISSUE

Whether any arguable issues exist for appellate review.

HOLDING

Because Bell filed an appeal pursuant to *Lindsey v. State*, counsel found no arguable issues for appeal based on a thorough review of the record, and Bell did not choose to file a pro se brief, the court did not err in deciding that there were no issues in need of further review. Therefore, the Court of Appeals affirmed the judgment of the Montgomery County Circuit Court.

Affirmed - 2016-KA-01751-COA (Feb. 20, 2018)

Opinion by Presiding Judge Griffis

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

W. Daniel Hinchcliff (Pub. Def. Office) for Appellant - Billy L. Gore (Att’y Gen. Office) for Appellee

Briefed by [Zachary Harper](#)

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

EDWARDS V. STATE

CRIMINAL - FELONY

INEFFECTIVE ASSISTANCE OF COUNSEL – POST-CONVICTION PROCEEDINGS – DIRECT APPEAL

– In Mississippi, an ineffective-assistance-of-counsel claim can be addressed on direct appeal when (1) the record affirmatively shows ineffectiveness of constitutional dimensions, or (2) the parties stipulate that the record is adequate and the Court determines that findings of fact by a trial judge able to consider the demeanor of witnesses, etc., are not needed

FACTS

Amos Edwards was convicted of sexual battery and sentenced to twenty-five years, with five years suspended, leaving twenty years to serve in the custody of the Mississippi Department of Corrections, followed by five years of supervised probation. Five days after his arrest, Edwards signed a written statement in which he admitted to the crime. During his trial, Edwards moved to suppress the written statement but was unsuccessful. Believing that he was coerced into writing the statement and that his counsel was ineffective in failing to competently challenge the admissibility of the statement, Edwards appealed.

ISSUE

Whether Edwards’ ineffective-assistance-of-counsel-claim was appropriate on direct appeal.

HOLDING

Because the record did not affirmatively show ineffectiveness of constitutional dimensions and was based on facts not fully apparent from the record, Edwards’ ineffective-assistance-of-counsel-claim was not appropriate to review on direct appeal. Therefore, the Court of Appeals affirmed the judgment of the Scott County Circuit Court.

Affirmed - 2017-KA-00282-COA (Feb. 20, 2018)

Opinion by Presiding Judge Griffis

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

Hunter N. Aikens (Pub. Def. Office) for Appellant – Abbie Eason Koonce (Att’y. Gen. Office) for Appellee

Briefed by [Luke Kelly](#)

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

MISSISSIPPI CASES EDITOR

ALLISON A. BRUFF

ASSOCIATE CASES EDITORS

BLAKE BROOKSHIRE

SPENCER NEWMAN

BETHANY POPPELREITER

LORA WUERDEMAN

Thank you for supporting the Mississippi Law Journal.

Questions or comments: Allison A. Bruff, newsletter@mississippilawjournal.org

All subscribers to BriefServ traditionally receive access to our website with archived case briefs since January 2007. Currently, our digital database is under construction. Requests for previous editions of the Newsletter can be made to Allison A. Bruff, newsletter@mississippilawjournal.org. If you have questions about accessing or using the BriefServ website, please contact us at support@mississippilawjournal.org