

MISSISSIPPI SUPREME COURT DECISIONS – NOVEMBER 15, 2018***SUPREME COURT - CIVIL CASES*****NETHERY V. CAPITALSOUTH PARTNERS FUND II, L.P.****CIVIL - OTHER**

STATE LAW - CONTRACTS - ARBITRABILITY - In questions of arbitrability, the court presumes that parties intended courts to decide issues of substantive arbitrability unless the parties clearly and unmistakably provide otherwise

DELAWARE LAW - ARBITRABILITY - CONDITIONS - The two conditions that determine arbitrability are (1) the arbitration provisions refers to the AAA or comparable rules or (2) the arbitration clause generally provides for the arbitration of all disputes

CONTRACTS - ARBITRATION - FIDUCIARY DUTY - Independent actions do not touch matters implicated in a contract if the independent cause of action can be brought had the parties not signed a contract

FACTS

Gregory Nethery entered into an ownership agreement with CapitalSouth Partners and Harbert Mezzanine Partners (collectively “Defendants”) for his company, On-Site Fuel Service, Inc. The business relationship between the parties soured, Nethery was fired, and the business became unsuccessful. Nethery filed suit, alleging breach of fiduciary duty and unjust enrichment. The Rankin County Circuit Court granted Defendants’ motion to compel arbitration based on the arbitration clause in the original agreement. Nethery appealed.

ISSUE

Whether the circuit court erred in accessing arbitrability or determining the scope of the agreement.

HOLDING

(1) Because Section 5.03(a) of the agreement permitted judicial remedies for disputes, the court did not err in compelling Nethery to arbitrate his claims in accordance to the arbitration clause. Further, because the Defendants’ alleged conduct depended on the terms of the agreement and were not able to be separately asserted, Nethery’s claims were subject to the arbitration provision. Therefore, the Supreme Court affirmed the judgment of the Rankin County Circuit Court.

Affirmed - 2017-CA-01238-SCT (Nov. 15, 2018)

Opinion by Justice Beam

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

Cecil Maison Heidelberg & J. Kevin Watson for Appellant - Kaytie Michelle Pickett, Adam Stone, Jackie Ray Bost II, Emerson Barney Robinson III, Phil B. Abernethy, John Houston Dollarhide, & Philip W. Thomas for Appellees

Briefed by [Brandon H. Wilson](#)

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TERRY V. OBY T. ROGERS, PLLC**CIVIL - OTHER**

TORTS - FRAUD - ELEMENTS - The elements of fraud are (1) a representation, (2) its falsity, (3) its materiality, (4) the speaker's knowledge of its falsity or ignorance of its truth, (5) intent that it should be acted upon by the person and in the manner reasonably contemplated, (6) the hearers's ignorance of its falsity, (7) reliance on its truth, (8) right to rely thereon, and (9) consequent and proximate injury; fraud must be proven by clear and convincing evidence

CONSTITUTIONAL LAW- SECTION 1983 CLAIMS - RECOVERY - In order to recover damages for an unconstitutional conviction or imprisonment under § 1983, a plaintiff must prove that the conviction or sentence has been either reversed, expunged, declared invalid, or called into question by issuance of a writ of habeas corpus

CONSTITUTIONAL LAW - SECTION 1983 CLAIMS - PUBLIC DEFENDER LIABILITY- Public defenders are not immune from liability under § 1983 for intentional misconduct, under color of state law, by virtue of alleged conspiratorial action with state officials that deprives their clients of federal rights

FACTS

John Terry was arrested and charged with possession of marijuana with intent to manufacture. Oby Rogers was court-appointed to represent Terry. In a plea-petition hearing on September 20, 2012, Terry confirmed that he intended to plead guilty of marijuana possession with intent to manufacture, but Rogers interrupted and stated that Terry was pleading to mere possession. Terry was convicted of misdemeanor possession and was given a three-year suspended sentence with supervised probation during that period. Terry claimed that after the hearing, all restraints were removed from him. According to Terry, the District Attorney's Office became dissatisfied with the plea agreement in the hours after the hearing and pressured Rogers. Terry claimed that he was summoned to Rogers's law office and Rogers encouraged him to sign an affidavit disavowing the adjudicated plea and agreeing to plead guilty to felony charges. Terry asserted that he refused to sign the affidavit and was then detained by a Covington County officer. According to Terry, he was held in Covington County Jail on no charges from September 20, 2012 until October 31, 2012, when he was taken to the Smith County Courthouse. There, Rogers informed Terry that he was going to request that the court allow him to withdraw as his attorney. Terry then appeared before the same judge who had presided in his plea-petition hearing and was freed. Terry claimed that he did not know at the time that Rogers had filed a plea petition agreement in the Covington County Courthouse, supposedly on behalf of Terry that declared Terry's guilt to felony charges. Terry filed a civil complaint against Rogers, claiming that Rogers had actively worked against him while serving as his attorney, specifically alleging fraud, legal malpractice, and violation of his civil rights under 42 U.S.C. § 1983. The trial court granted summary judgment in favor of Rogers. Terry appealed.

ISSUE

Whether the trial court erred in denying Terry's fraud claim, § 1983 claim, and legal malpractice claim.

HOLDING

(1) Because Terry failed to demonstrate that what the plea petition represented was false or that any proximate harm resulted from it, and since the plea petition was immaterial to his alleged unlawful confinement, the trial court did not err in denying his fraud claim. Further, because Terry failed to demonstrate that what the plea petition represented was false or that the petition's filing constituted intentional misconduct designed to deprive Terry of his constitutional rights, the trial court did not err in denying his § 1983 claim. Finally, because Terry abandoned the legal malpractice claim articulated in his pleadings by expressly disavowing any such claim, the trial court did not err in denying his legal malpractice claim. Therefore, the Supreme Court affirmed the judgment of the Covington County Circuit Court.

Affirmed - 2017-CP-00180-SCT (Nov. 15, 2018)

Opinion by Justice Beam

Hon. Michael H. Ward (Covington County Circuit Court)

Pro se for Appellant - J. Wyatt Hazard, Richard Benjamin McMurtray, & Matthew Wyatt Walton for Appellee

Briefed by [Luke Phillips](#)

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CIVIL - STATE BOARDS & AGENCIES

UNIFORMED SERVICES EMPLOYMENT & REEMPLOYMENT ACT - REEMPLOYMENT - COMPENSATION - Under USERRA, service members have a statutory right to prompt reemployment for one year upon completion of a period of service; USERRA links available compensation to the loss of wages or benefits suffered by an employer's failure to comply with prompt reemployment

UNIFORMED SERVICES EMPLOYMENT & REEMPLOYMENT ACT - WILLFUL CONDUCT - LIQUIDATED DAMAGES - An employer must pay liquidated damages if the court determines the employer's failure to comply with USERRA was willful; a violation shall be considered willful if the employer either knew or showed reckless disregard for whether its conduct was prohibited by USERRA

UNIFORMED SERVICES EMPLOYMENT & REEMPLOYMENT ACT - ATTORNEY'S FEES - LODESTAR METHOD - USERRA authorizes the trial court to award a prevailing USERRA plaintiff reasonable attorney fees, expert witness fees, and other litigation expenses; the trial court must apply the lodestar method, weighing the number of hours reasonably expended multiplied by a reasonable hourly rate; USERRA prohibits taxing fees or court costs to a service member filing under the Act

FACTS

Tammy Webster worked as a part-time dispatcher for the Miss. Dep't of Wildlife, Fisheries & Parks ("MDWFP"). She later enlisted in the Mississippi National Guard and informed MDWFP of her upcoming service. Webster attended training for eight months. When she returned, she asked MDWFP to place her back on the dispatch schedule. MDWFP refused to renew her contract, citing scheduling conflicts. Webster filed an action against MDWFP in the Hinds County Circuit Court under the Uniformed Services Employment and Reemployment Act ("USERRA"). The bench trial found for Webster on her USERRA claim but did not award Webster back pay and awarded \$2,800 in attorney's fees with no explanation. Webster appealed.

ISSUES

Whether the trial court erred in (1) limiting Webster's compensation to one year of lost wages; (2) not awarding liquidated damages; (3) awarding an arbitrary amount of attorney fees and expenses without reviewing a statement of the attorney's hours, hourly rate, and a bill of actual cost; and (4) taxing Webster with court costs.

HOLDING

(1) Because USERRA requires MDWFP to reemploy Webster but was under no statutory obligation to employ her indefinitely, Webster's compensation award was reasonably linked to what Webster lost due to MDWFP's failure to comply with USERRA. (2) Because Webster requested liquidated damages and presented evidence that MDWFP knew about USERRA's requirements, the trial court erred in failing to determine whether MDWFP's failure to comply with USERRA was willful. (3) Because trial courts should use the "lodestar" calculation method to determine attorney fees, the trial court erred in failing to use this method to explain its calculation as reasonable. (4) Because USERRA prohibits taxing filing service members, the trial court erred in taxing Webster with court costs. Therefore, the Supreme Court affirmed in part and reversed and remanded in part the judgment of the Hinds County Circuit Court.

Affirmed in Part; Reversed & Remanded in Part - 2017-CA-00935-SCT (Nov. 15, 2018)

Opinion by Justice Maxwell

Hon. Tomie T. Green (Hinds County Circuit Court)

Michael Farrell for Appellant - Lee Davis Thames Jr. (Att'y Gen. Office) for Appellee

Briefed by [Katelin Davis](#)

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SUPREME COURT - ORDERS

DUNN V. STATE

COURT ORDER

ORDER

This en banc order by the Mississippi Supreme Court dismissed a post-conviction relief motion by Gregory Dunn as procedurally barred. The Court also found that Dunn's claim was frivolous and warned that future frivolous filings may result in sanctions.

OBJECTIONS

Presiding Justice Kitchens argued that while Dunn's claim was procedurally barred, it was not frivolous and the majority's warning of monetary sanctions violated Mississippi's constitutional guarantee that all citizens will have access to the courts.

Justice King argued while Dunn's claim was procedurally barred, it was not frivolous and the majority's warning of monetary sanctions only served to punish or preclude Dunn from his lawful right to appeal.

Dismissed - 2016-M-01514 (Nov. 14, 2018)

En Banc Opinion by Justice Maxwell - Objections by Presiding Justice Kitchens & Justice King
Briefed by [Davis Pigg](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – NOVEMBER 13, 2018

COURT OF APPEALS - CIVIL CASES

CAMPBELL V. HARRISON CTY. BD. OF SUPERVISORS

CIVIL - PERSONAL INJURY

MISSISSIPPI TORT CLAIMS ACT - NEGLIGENCE - OPEN & OBVIOUS CONDITION - A governmental entity shall not be liable for the failure to warn of a dangerous condition which is obvious to one exercising due care; this acts as a complete bar for failure to warn of a dangerous condition

MISSISSIPPI TORT CLAIMS ACT - OPEN & OBVIOUS CONDITION - NEGLIGENT MAINTENANCE - The fact that a dangerous condition is obvious only exempts the governmental entity from liability for the failure to warn of the condition; it is not a bar to recovery when the issue is the government's negligent maintenance or repair which led to the dangerous condition

MISSISSIPPI TORT CLAIMS ACT - OPEN & OBVIOUS CONDITION - COMPLETE DEFENSE - The open and obvious defense is a complete bar to a negligence claim if the plaintiff is one hundred percent negligent himself

FACTS

John Tate Campbell was seriously injured when he fell into an open drainage channel while walking on the beach late at night without a flashlight and suffered severe injuries. The channel, which is sixteen to eighteen feet wide, is on the beach near the Courthouse Road Pier in Gulfport. Campbell sued Harrison County under the Mississippi Tort Claims Act, alleging that the county negligently failed to protect him from and warn him of a dangerous condition. The circuit court granted summary judgment in favor of Harrison County. Campbell appealed.

ISSUE

Whether the circuit court erred in granting summary judgment in favor of Harrison County.

HOLDING

Because the wide drainage channel is an “open and obvious” condition, and Campbell’s own negligence in walking straight into it was the sole proximate cause of his injury, the circuit court did not err in granting summary judgment in favor of Harrison County. Therefore, the Court of Appeals affirmed the judgment of the Harrison County Circuit Court.

DISSENT

Chief Judge Lee argued that genuine issues of material fact existed regarding whether the culvert was open and obvious and whether Harrison County bore any responsibility, or comparative fault, for the accident. He would reverse and remand to the circuit court for further proceedings.

Affirmed - 2017-CA-00961-COA (Nov. 15, 2018)

En Banc Opinion by Judge Wilson - Dissent by Chief Judge Lee

Hon. Roger T. Clark (Harrison County Circuit Court, First Judicial Dist.)

Owen J. Bradley for Appellant - Tim C. Holleman & Patrick Taylor Guild for Appellee

Briefed by [Emily Warwick](#)

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CRAYS V. PSL N. AM.

CIVIL - WORKERS' COMPENSATION

WORKERS' COMPENSATION - BURDEN OF PROOF - ELEMENTS - In a workers' compensation case, the claimant bears the burden of proving by a fair preponderance of the evidence: (1) an accidental injury, (2) arising out of and in the course of employment, and (3) a causal connection between the injury and the death or claimed disability; once the claimant makes out a prima facie case of disability, the burden of proof shifts to the employer

WORKERS' COMPENSATION - CAUSATION - EVIDENCE - To be compensable, an injured worker must present evidence to a reasonable degree of medical probability that the work accident was the proximate cause of the worker's injury

FACTS

Clifton Dale Crays suffered a work-related accident. Crays claimed only that his neck was injured on a job-injury report. He maintained the same claim at a medical center thereafter. Crays's employer compensated him for his neck injury. Crays filed a motion for medical treatment with the Mississippi Worker's Compensation Commission (“the Commission”), alleging neck and back pain after his employer denied compensating him for his back injury. Crays claimed in his motion to have suffered both injuries during the accident. However, Crays had significant prior history of back pain that included two back surgeries. The administrative judge ordered Crays's employer to pay for all treatments recommended by his doctor, including treatments for Crays's back. The Commission reversed the administrative judge's order and dismissed Crays's back-injury claim based on Crays's history of chronic back pain prior to the work-related accident and the lack of evidence that his lumbar condition was worsened by the accident. Crays appealed.

ISSUE

Whether the Commission's order to dismiss Crays's claim to recover compensation for his back injury was supported by substantial evidence.

HOLDING

Because Crays suffered unchanging back pain for six years and underwent two back surgeries prior to the accident, and Crays did not report any back pain in his job-injury report, there was substantial evidence to support the Commission's findings. Therefore, the Court of Appeals affirmed the judgment of the Mississippi Worker's Compensation Commission.

Affirmed - 2017-WC-01720-COA (Nov. 13, 2018)

Opinion by Judge Barnes
Mississippi Workers' Compensation Commission
James Kenneth Wetzel for Appellant - M. Reed Martz for Appellee
Briefed by [Drey Russell](#)

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DAUENHAUER V. DAUENHAUER

CIVIL - DOMESTIC RELATIONS

DOMESTIC RELATIONS - DIVORCE - REHABILITATIVE ALIMONY - Rehabilitative alimony provides for a party to become self-supporting and prevents that party from becoming destitute while searching for income

DIVORCE - MARITAL PROPERTY - POINT OF DEMARCATION - Chancellors should indicate in the record what date they choose for the point of demarcation and why they choose it

DOMESTIC RELATIONS - DIVORCE - AWARD OF ATTORNEY'S FEES - Where a party is able to pay his attorney's fees, including in situations where the money has been borrowed, an award of attorney's fees is inappropriate

FACTS

The Hancock County Chancery Court granted Steven and Julia Dauenhauer a divorce based on irreconcilable differences. The chancellor distributed the marital property and awarded Steven rehabilitative alimony. Julia appealed.

ISSUES

Whether the chancellor erred in (1) awarding Steven rehabilitative alimony; (2) determining the date of the end of the accumulation of marital assets; (3) classifying Julia's retirement accounts as marital property; and (4) awarding attorney's fees to Steven.

HOLDING

(1) Because the chancellor correctly used the factors for determining an award of alimony, there was no manifest error in the chancellor's award of alimony. (2) Because the chancellor indicated in the record the point of demarcation and why it was chosen, the chancellor was within his discretion to choose the date of trial as the point of demarcation. (3) Because Julia did not meet the burden of proving her retirement accounts were acquired prior to marriage, the chancellor did not abuse his discretion by classifying the accounts as marital property. (4) Because Steven was able to pay his attorney's fees, the award of attorney's fees was improper. Therefore, the Court of Appeals affirmed in part and reversed and rendered in part the judgment of the Hancock County Chancery Court.

Affirmed in Part; Reversed & Rendered in Part - 2017-CA-00424-COA (Nov. 13, 2018)

Opinion by Judge Carlton
Hon. James B. Persons (Hancock County Chancery Court)
Edward Gibson for Appellant - Clement S. Benvenuti for Appellee
Briefed by [Karen Lott](#)

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GENERAL MOTORS, LLC. V. RYAN MOTORS, INC.

CIVIL - STATE BOARDS & AGENCIES

ADMINISTRATIVE LAW - APPELLATE REVIEW - AGENCY'S CONCLUSIONS - An agency's conclusions must remain undisturbed unless the agency's order (1) is not supported by substantial evidence, (2) is arbitrary or capricious, (3) is beyond the scope or power granted to the agency, or (4) violates one's constitutional rights

ADMINISTRATIVE LAW - ADMINISTRATIVE HEARINGS - GUIDELINES - Administrative hearings are not trials and are thereby not governed by the same rules which are applicable to courts of law

APPELLATE PROCEDURE - REMEDIES - ATTORNEY'S FEES - If the Court of Appeals has ruled to reverse a chancery's court ruling, they will likewise reverse the chancery court's award of attorney's fees associated with the ruling

FACTS

Ryan Motors Inc. ("Ryan"), a Chevrolet dealer in Hattiesburg, Mississippi, filed an administrative complaint with the Mississippi Motor Vehicle Commission ("the Commission") after General Motors, LLC ("GM") approved the relocation request of another Chevrolet dealer to a location ten miles from its dealership. The complaint asserted that by failing to give Ryan notice of the other dealer's relocation, GM violated statutory authority and its franchise agreement with Ryan. The Commission dismissed the complaint, finding that GM was not required to provide notice and that there was no violation. Ryan appealed the dismissal to the Forrest County Chancery Court, which reversed the Commission's decision, ruling that the Commission's findings were "arbitrary and capricious." GM appealed.

ISSUES

Whether the chancery court erred in (1) ruling that the Commission's findings were "arbitrary and capricious;" and (2) awarding Ryan attorney's fees.

HOLDING

(1) Because Ryan failed to produce any evidence that GM modified Ryan's franchise agreement, GM was under no obligation to provide the dealer with notice. Additionally, because Ryan had the opportunity to cross-examine, but made the choice not to, this issue was without merit. Thus, there was no evidence that the Commission's findings were arbitrary or capricious. (2) Because the chancery court erred in holding that the Commission's findings were arbitrary and capricious, the chancery court's award of attorney's fees to Ryan was also improper. Therefore, the Court of Appeals reversed and rendered the judgment of the Forrest County Chancery Court.

Reversed & Rendered - 2017-CC-00312-COA (Nov. 13, 2018)

Opinion by Judge Barnes

Hon. Johnny Lee Williams (Forrest County Chancery Court)

Thomas A. Casey Jr, J. Andrew Gipson, & Kaytie Michelle Pickett - S. Robert Hammond Jr for Appellee

Briefed by [Whitney Jackson](#)

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GLASS V. CITY OF GULFPORT

CIVIL - PROPERTY DAMAGE

CIVIL PROCEDURE - INVOLUNTARY DISMISSAL - WANT OF PROSECUTION - Miss. R. Civ. P. 41(b) allows a court, at its discretion, to involuntarily dismiss a case for want of prosecution

CIVIL PROCEDURE - PLEADINGS - ACTION OF RECORD - Miss. R. Civ. P. 7 defines pleadings and motions, and an action of record must be a pleading or motion which advances the case

CIVIL PROCEDURE - INVOLUNTARY DISMISSAL - GOOD CAUSE - The burden of proof to establish good cause for failure to prosecute a case is on the party which has failed to prosecute a claim and is asserting good cause

FACTS

On January 22, 2015, Rebecca Glass filed a complaint in the Harrison County Circuit Court against the City of Gulfport, Mississippi ("the City"). Her complaint alleged both state and federal claims relating to the city's alleged negligence in maintaining and operating a drainage system. The City removed the case to federal court, where the federal claims were dismissed and the case was remanded back to state court. On July 14, 2015 the City filed a motion to dismiss all

remaining charges, and ten days later, Glass filed a motion requesting ten extra days to respond to the City's motion to dismiss. However, she neither set her motion for a hearing nor responded to the City's motion. On February 1, 2017, the circuit clerk filed a clerk's motion to dismiss for want of prosecution. Glass responded on February 3, 2017 and asserted that the City's motion to dismiss was still pending, that she wished to proceed with the case, and that good cause would be shown for her failure to prosecute her case. The trial court found that Glass had failed to demonstrate good cause and granted the clerk's motion to dismiss for want of prosecution. Glass appealed.

ISSUES

Whether (1) the trial court erred in dismissing the case for want of prosecution; (2) Glass's response to the clerk's motion constituted an action of record; and (3) Glass showed good cause for failing to diligently prosecute her case.

HOLDING

(1) Because Miss. R. Civ. P. 41(d) allows a court clerk to involuntarily dismiss an action, at its discretion, as a penalty for dilatoriness, and because Glass failed to pursue her case for over a year, the trial court did not err in dismissing the case for want of prosecution. (2) Because Miss. R. Civ. P. 7 defines pleadings and motions, and because Glass's response to the clerk's motion was neither a pleading nor a motion which advanced the case, Glass's response to the clerk's motion was not an action of record. (3) Because the burden of proof to establish good cause for failure to prosecute a case is on the party asserting good cause, and because Glass offered no explanation for her failure to prosecute her case, Glass failed to show good cause. Therefore, the Court of Appeals affirmed the judgment of the Harrison County Circuit Court.

Affirmed - 2017-CA-00510-COA (Nov. 13, 2018)

Opinion by Presiding Judge Griffis

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

Michael W. Crosby for Appellant - Jeffrey S. Bruni for Appellee

Briefed by [Jon-Paul Bushnell](#)

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COURT OF APPEALS - POST-CONVICTION RELIEF

BATES V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - JURISDICTION - PERMISSION - Pursuant to Miss. Code Ann. § 99-39-7, permission must be obtained from the Mississippi Supreme Court in order to seek post-conviction relief in the circuit court when a case is affirmed on direct appeal

POST-CONVICTION RELIEF - FRIVOLOUS FILINGS - SANCTIONS - The Court of Appeals, as well as the circuit court, is vested with authority to impose sanctions on pro se litigants for frivolous filings; sanctions may take the form of monetary sanctions and appropriate restrictions on future filings, or forfeiture of an inmate's accrued and earned time

FACTS

In 1995, Earl Bates was convicted of one count of murder and two counts of aggravated assault. Bates was sentenced as a habitual offender to life for the murder conviction and twenty years for each aggravated assault conviction, to be served consecutively to his life sentence. In 1997, Bates's convictions were affirmed on direct appeal. In the years following the affirmance, Bates filed numerous motions for post-conviction collateral relief in both the circuit court and the Supreme Court. Bates filed another application for leave to proceed in the circuit court on June, 28, 2017. On August 2, 2017, the Supreme Court, once again, dismissed Bates's application. On October 2, 2017, the circuit court dismissed

Bates's motion for PCCR for a lack of jurisdiction due to Bates's failure to obtain leave. Bates appealed. The State subsequently moved to dismiss Bates's appeal and for sanctions due to his continued filing of frivolous motions.

ISSUES

Whether (1) the dismissal of Bates's PCCR for lack of jurisdiction was proper; (2) the State's motion for dismissal of Bates's appeal should be granted; and (3) sanctions due to continued filing of frivolous motions should be granted.

HOLDING

(1) Because Bates filed his motion for PCCR without permission from the Supreme Court, the circuit court lacked jurisdiction to consider the motion. Thus, the circuit court's dismissal of Bates's motion for PCCR was proper. (2) Because the Supreme Court addressed Bates's appeal and affirmed the circuit court's judgment, the State's pending motion to dismiss the appeal was dismissed as moot. (3) Because Bates's motion for PCCR exhibited a blatant disregard of the procedural rules and the orders of the court, the State's motion for sanctions was granted. Therefore, the Court of Appeals affirmed the judgment of the Pike County Circuit Court.

Affirmed - 2017-CP-01316-COA (Nov. 13, 2018)

Opinion by Presiding Judge Griffis

Hon. Michael M. Taylor (Pike County Circuit Court)

Pro se for Appellant - Joseph S. Hemleben (Att'y Gen. Office) for Appellee

Briefed by [Natalie McCarty](#)

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READUS V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - JURISDICTION - PROCEDURAL BAR - When a prisoner's conviction and sentence have been affirmed on direct appeal, he may not file a motion for post-conviction relief in the circuit court without first obtaining permission from the Mississippi Supreme Court

FACTS

Following a jury trial in Madison County Circuit Court, Kenneth Readus was convicted of murder and aggravated assault and sentenced to life imprisonment and twenty years to run concurrently. His conviction and sentence were affirmed on appeal. Readus later filed an application in the Supreme Court for leave to file for post-conviction relief. The Supreme Court denied his application. Seven years later, Readus filed an "Out of Time Appeal" in the Supreme Court. The Court treated the filing as an application for leave to proceed in the circuit court and denied it as without merit, barred by the statute of limitations, and barred as a successive writ. Six days after Readus filed his appeal in the Supreme Court but before the Court ruled on the papers, he filed a "Motion for Correction of Sentence" in the circuit court. Readus's motion was the same document that was submitted to the Supreme Court. The circuit court dismissed Readus's "Motion for Correction of Sentence" on the grounds that they lacked jurisdiction because the Supreme Court had not granted Readus permission to file it. Readus appealed.

ISSUE

Whether the circuit court erred in dismissing Readus's motion for post-conviction relief.

HOLDING

Because Readus had not obtained permission from the Supreme Court to file a motion for post-conviction relief, and because a prisoner whose conviction and sentence have been affirmed on direct appeal may not file a motion for post-conviction relief in the circuit court without first obtaining the Supreme Court's permission, the circuit court did not err in dismissing Readus's motion for post-conviction relief for lack of jurisdiction. Therefore, the Court of Appeals affirmed the judgment of the circuit court.

Affirmed - 2018-CA-00008-COA (Nov. 13, 2018)

Opinion by Judge Wilson

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

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

Briefed by [Carson Phillips](#)

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WRIGHT V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - JURISDICTION - INDICTMENT - Once an indictment has been served on a defendant, a court having subject-matter jurisdiction is empowered to proceed, and subsequent events, such as accepting guilty pleas to lesser related offenses, in no way oust the court of personal jurisdiction

POST-CONVICTION RELIEF - INDICTMENT - GUILTY PLEA - A defendant indicted under the jurisdiction of the circuit court, who voluntarily enters a guilty plea, waives the right to be indicted for the crimes to which he entered the plea

POST-CONVICTION RELIEF - GUILTY PLEA - SUFFICIENCY OF EVIDENCE - A valid guilty plea waives the right to challenge the sufficiency of the State’s evidence

FACTS

Senque Wright pled guilty to conspiracy to possess precursor chemicals in 2011. The circuit court entered a non-adjudication order, sentencing Wright to serve five years probation, which was later revoked when he was arrested on another charge. Consequently, the circuit court sentenced Wright to serve eight years. Wright then filed a PCR motion, which the circuit court denied. Wright appealed.

ISSUES

Whether (1) the court had jurisdiction to amend the defendant’s indictment in court; (2) the court violated the defendant’s rights by failing to properly indict the defendant; and (3) the court had a factual basis for the amended charge.

HOLDING

(1) Because a guilty plea in no way ousts the court of personal jurisdiction, the circuit court had jurisdiction to amend Wright’s indictment. (2) Because a defendant who voluntarily enters a guilty plea waives his right to be indicted for the crimes to which he enters his plea, and Wright testified that he understood the indictment was being amended, the circuit court did not violate the defendant’s rights. (3) Because a valid guilty plea waives the right to challenge the sufficiency of the State’s evidence, and Wright’s plea was voluntarily and intelligently pled, he waived the right to challenge the sufficiency of the evidence. Therefore, the Court of Appeals affirmed the judgment of the Pearl River County Circuit Court.

Affirmed - 2017-CP-01697-COA (Nov. 13, 2018)

Opinion by Judge Westbrook

Hon. Dina Richelle Lumpkin (Pearl River County Circuit Court)

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

Briefed by [Jack Schultz](#)

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COURT OF APPEALS - CRIMINAL CASES

MCBEATH V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - INSANITY DEFENSE - M'NAGHTEN TEST - To establish an insanity defense, the accused must not have known right from wrong at the time of the offense

CRIMINAL PROCEDURE - POST-CONVICTION RELIEF - INEFFECTIVE ASSISTANCE - Ordinarily, a claim of ineffective assistance should be raised in a motion for post-conviction relief, not on direct appeal

APPELLATE PROCEDURE - INEFFECTIVE ASSISTANCE OF COUNSEL - ELEMENTS - To establish a claim for ineffective assistance, defendant must show both (1) that counsel's performance was deficient and (2) that he was prejudiced as a result

FACTS

Victor McBeath was convicted of first-degree murder and first-degree arson. On the night of the crime, Demonta McBeath, Victor's brother, testified that Victor was acting delusional. Demonta woke up that night to a gunshot. He found Victor walking around with a gun and soon found their father's dead body. Demonta attempted to restrain Victor and then fled the house. Officers soon arrived on the scene and saw flames coming from the house. The officers put out the fire and arrested Victor. Victor later told officers that he shot his father and set fire to the house. Victor underwent a psychiatric test before trial and was found to be competent. He did not raise an insanity defense at trial and was convicted of both charges. Victor appealed.

ISSUE

Whether Victor's attorney provided ineffective assistance in failing to raise an insanity defense and failing to object to speculative opinion by police officers.

HOLDING

(1) Because Victor could not establish, based on the evidence in the record, that he was prejudiced by failing to raise an insanity defense, his ineffective assistance claim failed. Further, because Victor merely asserted the issue of the officers' speculative opinion and didn't cite authority or develop the argument in his brief, this issue was waived on appeal. Because both issues were brought up on direct appeal, they were dismissed without prejudice. Therefore, the Court of Appeals affirmed the judgment of the Neshoba County Circuit Court.

Affirmed - 2017-KA-01090-COA (Nov. 13, 2018)

Opinion by Chief Judge Lee

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

W. Daniel Hinchcliff (Pub. Def. Office) for Appellant - Laura Hogan Tedder (Att'y Gen. Office) for Appellee

Briefed by [Zachary Flowers](#)

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MISSISSIPPI CASES EDITOR

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