

MISSISSIPPI SUPREME COURT DECISIONS – APRIL 13, 2017**SUPREME COURT - CIVIL CASES****MISS. DEP'T CORRS. V. RODERICK & SOLANGE MACARTHUR JUSTICE CTR.****CIVIL - OTHER**

STATUTORY INTERPRETATION - AMENDED STATUTE - PENDING-ACTION CANON - Absent an applicable savings clause, a final judgment, or a loss of a vested right, courts must apply an amended statute to an instant case as though it has always read as it reads today

MISSISSIPPI PUBLIC RECORDS ACT - ACCESS TO PUBLIC RECORDS - PUBLIC RIGHT - The right to inspect and copy public records provided under the Mississippi Public Records Act (MPRA) is a public right

MISSISSIPPI PUBLIC RECORDS ACT - REQUIRED DISCLOSURE - EXEMPTIONS - The MPRA is subject to divestment by enactment of statutory exemptions by the Legislature, and Miss. Code Ann. §§ 99-19-51(2) and (6)(c) both exempt public bodies from disclosing the identities of all members of the execution team, a supplier of lethal injection chemicals, and the identities of those witnesses listed in § 99-19-55(2) who attend as members of the victim's or the condemned person's immediate family under the provisions of the MPRA

CIVIL - CONTRACT RIGHTS - ELEMENTS - To form a contract, there must be (1) two or more contracting parties, (2) consideration, (3) an agreement that is sufficiently definite, (4) parties with legal capacity to make a contract, (5) mutual assent, and (6) no legal prohibition precluding contract formation

CIVIL - QUASI-CONTRACT RIGHTS - NON-DEPENDENCY UPON STATUTE - A quasi-contract vested right must have been in being as a right notwithstanding the statute's nonbeing

FACTS

The Roderick & Solange MacArthur Justice Center (Justice Center) made a request under the Mississippi Public Records Act (MPRA) for the Mississippi Department of Corrections (MDOC) to produce certain records pertaining to lethal-injection executions. MDOC furnished the Justice Center with the requested records but redacted some information. Justice Center filed suit seeking an order to remove the redactions. The chancery court ordered MDOC to remove the redactions. MDOC appealed. During the pendency of the appeal, the Mississippi Legislature enacted into law two statutes that created exemptions to MPRA regarding certain information of lethal-injections executions.

ISSUE

Whether MDOC was required to remove the redactions and fully disclose the lethal-injection records.

HOLDING

Because the amended exemptions to the MPRA were enacted before final judgment and did not include a savings clause, and because Justice Center has no vested rights, by lack of consideration and lack of non-dependency upon a statute, MDOC had no obligation to fully disclose the redacted information regarding lethal-injection executions exempted by the statutes. Therefore, the Supreme Court vacated the judgment of the Hinds County Chancery Court and rendered a decision in favor of MDOC.

CONCURRENCE

Presiding Justice Dickenson agreed only in the result of the decision. He dissented with the majority's choice to use the pending-action canon, and argued instead that the presumption against retroactive application of statutes canon is the better view and should control this decision, albeit both canons reach the same result.

DISSENT

Justice King argued that Miss. Code Ann. § 99-19-51 did not apply to this case. Therefore, MDOC's redactions of the public records requested by Justice Center were in violation of MPRA.

Vacated & Rendered - 2015-CA-00431-SCT (Apr. 13, 2017)

En Banc Opinion by Presiding Justice Randolph - Concurrence by Presiding Justice Dickenson - Dissent by Justice King
Hon. Denise Owens (Hinds County Chancery Court)
Paul E. Barnes, Jason L. Davis, & Wilson Douglas Minor (Att'y Gen. Office) for Appellant - James W. Craig for Appellee
Briefed by [Jonathan M. Barnes](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – APRIL 11, 2017

COURT OF APPEALS - CIVIL CASES

DIETZ V. S. MISS. REG'L CTR.

CIVIL - WORKERS' COMPENSATION

EQUITABLE RELIEF - ESTOPPEL - DETRIMENTAL RELIANCE - Mississippi law defines the elements of equitable estoppel as: (1) belief and reliance on some representation; (2) a change of position as a result thereof; and (3) detriment or prejudice caused by the change of position

WORKERS' COMPENSATION - STATUTE OF LIMITATIONS - TOLLING FACTOR - The statute of limitations for a workers' compensation claim is two years, unless an employer's continuous reassurances to a claimant that the employer will file a formal claim for the claimant are relied upon by the claimant

FACTS

In January 2012, Aleshia Dietz was injured while on the job and began to receive payments from her employer for salary and medical expenses. Dietz was given assurances by the adjuster for the Workers' Compensation Trust that "she would take care of everything." Two years later, Dietz was told she would not receive any more payments for medical expenses because she failed to file a formal claim within the two-year statute of limitations. An administrative judge held for Dietz, finding that the company's and workers' compensation carrier's voluntary payment of medical benefits and salary waived the necessity for filing a formal complaint within the time period. The company and carrier appealed the judge's order to the Mississippi Workers' Compensation Commission, which then reversed the order, finding that payment of medical expenses did not constitute wages in lieu of compensation; therefore, the statute of limitations was not tolled. Dietz appealed.

ISSUE

Whether Dietz's employer and the workers' compensation carrier were estopped from asserting the two-year statute of limitations bar.

HOLDING

Because Dietz relied to her detriment upon representations from her employer and workers' compensation carrier that she did not need to file a formal complaint, the employer and carrier were estopped from arguing statute of limitations as a defense. Therefore, the Court of Appeals reversed and remanded the decision of the Mississippi Workers' Compensation Commission.

DISSENT

Judge Wilson argued that the Commission's decision was supported by substantial evidence and should be affirmed.

Reversed, Rendered, & Remanded - 2016-WC-00396-COA (Apr. 11, 2017)

En Banc Opinion by Presiding Judge Irving

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ESTATE OF AVAKIAN V. WILMINGTON TRUST NAT'L ASS'N

CIVIL - WILLS, TRUSTS, & ESTATES

PROBATE - CLAIMS - TIME-BAR - Pursuant to Miss. Code Ann. § 91-7-151, all claims against the estate of a deceased person that were filed more than ninety days after the first publication of notice to creditors to present their claim are time-barred

PROBATE - CREDITOR - NOTICE - Under *In re Estate of Ladner*, a strict and literal interpretation of Miss. Code Ann. § 91-7-151 mandates that a reasonably ascertainable creditor of the estate be given notice by mail, by the administrator, before the ninety days specified in § 91-7-151 begins to run

PROBATE - UNPAID PROMISSORY NOTE - STATUTE OF LIMITATIONS - If a creditor is not paid on a claim based on a promissory note during the probate proceeding, the creditor must then bring a separate civil suit against the estate to enforce that claim on the promissory note before the four-year statute of limitations in such actions expires

STATUTE OF LIMITATIONS - TOLLING - COURT ORDER - Pursuant to Miss. Code Ann. § 15-1-57, when any person shall be prohibited or restrained by the order or process of any court in this state from commencing or prosecuting any action or remedy, the time during which such person shall be so prohibited or restrained shall not be computed as any part of the period of time limited by this chapter for the commencement of such action

FACTS

On September 18, 2002, Norair Avakian and his wife, Burnette Avakian, purchased a house located in Columbus, Mississippi. Norair later conveyed title to the property to Burnette and took out a loan in his name only with EquiFirst Corporation ("Creditor"). The Creditor required both Norair and Burnette to execute separate deeds of trust on the property. Norair fell in default on the loan and later died on July 19, 2010. On July 28, 2010, the Lowndes County Chancery Court entered an order probating Norair's last will and testament and issued letters testamentary to Burnette. On that same day, Burnette failed to identify any entity as a known creditor of the estate, and she failed to provide the Creditor notice by mail regarding the probate of the Estate. The Creditor moved to foreclose on the home in May 2012. Burnette filed suit against the Creditor seeking to enjoin the foreclosure by arguing that the two trust deeds on the home were both void. The district court entered judgment in favor of Burnette. Creditor appealed to the Fifth Circuit who issued a stay on May 12, 2014 prohibiting foreclosure on the property during the pendency of the appeal. On December 9, 2014, the Fifth Circuit reversed the district court. On October 14, 2014, Creditor filed a statement of claim in the probate proceeding pending in the chancery court based upon Norair's debt arising from the promissory note of \$815,905.06. On January 30, 2015, Burnette filed a contest of Creditor's statement of claim arguing the claim was time-barred. The chancellor found in favor of the creditor, holding that Creditor's claim was not time-barred. Burnette appealed.

ISSUES

Whether the chancellor erred in finding that (1) the Creditor's October 2014 statement of claim was not time-barred, and (2) the statute of limitations had not expired.

HOLDING

(1) Because there is no question that the Creditor was a reasonably ascertainable creditor and that Burnette failed to provide notice to Creditor, the statement of claim filed by the Creditor was not time-barred. (2) Because the Fifth Circuit's stay prohibiting the Creditor from foreclosing on the property tolled the statute of limitations as to the promissory note, the statute of limitations had not expired, and the chancellor did not err. Therefore, the Court of Appeals affirmed the decision of the Lowndes County Chancery Court.

Affirmed - 2015-CA-01520-COA (Apr. 11, 2017)

En Banc Opinion by Judge Carlton

Hon. Kenneth M. Burns (Lowndes County Chancery Court)

Steven Craig Panter & David L. Sanders for Appellant - William Jacob Long IV, Eddie Travis Ramey, & Christopher Daniel Meyer for Appellees

Briefed by [Zachary Roberson](#)

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HOWARD V. STATE

CIVIL - OTHER

CRIMINAL PROCEDURE - PARDON - EXPUNGEMENT - The expungement of criminal records that have been kept pursuant to Miss. Code Ann. § 45-21-1 is an act of legislative grace, and neither the State nor the Federal Constitution provides a right to an expungement

CRIMINAL PROCEDURE - UNCONDITIONAL PARDON - EXPUNGEMENT - An unconditional pardon solely removes all legal punishment for the offense and prevents any future legal disability based on that offense; however, the pardon does not edit history

FACTS

In 2009, Joshua Howard pled guilty to statutory rape and was sentenced to a term of twenty years. In January 2014, the Governor of Mississippi granted Howard a full, complete, and unconditional pardon for his conviction. On June 25, 2014, Howard filed a motion requesting that all records related to the conviction for which he was pardoned be expunged in the Rankin County Circuit Court. The court denied Howard's motion for an expungement. Howard appealed.

ISSUE

Whether the trial court erred in denying Howard's motion for expungement.

HOLDING

Because an individual is not entitled to an expungement after receiving a gubernatorial pardon, the trial court did not err in denying Howard's motion for expungement. Therefore, the Court of Appeals affirmed the judgment of the Rankin County Circuit Court.

CONCURRENCE

In a special concurrence, Judge Westbrook agreed that the court is bound by the law of the highest court. However, she agreed with the dissent in *Polk v. State* that the effect of a gubernatorial pardon entitles one to an expungement.

Affirmed - 2015-CA-01496-COA (Apr. 11, 2017)

Opinion by Judge Greenlee - Concurrence by Judge Westbrook

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

Cynthia Ann Stewart for Appellant - Scott Stuart & Jason L. Davis (Att'y Gen. Office) for Appellee

Briefed by [Victoria Jones](#)

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IN RE N.M. V. MISS. DEP'T OF HUMAN SERV.

CIVIL - CUSTODY

FAMILY LAW - CUSTODY - ANTICIPATORY NEGLECT - The harm to a sibling, the potential harm done to another child, is sufficient to justify intervention of the court to remove the sibling from the harmful environment

FAMILY LAW - CUSTODY - NEGLECTED CHILD - Any child who is without proper care, custody, supervision or support, or who, for any reason, lacks the care necessary for his health, morals, or well-being is neglected

FAMILY LAW - YOUTH COURT - SPECIAL CARE - A youth court's finding that a child is in need of special care is not a basis, in and of itself, for bringing a child within the jurisdiction of the youth court

FAMILY LAW - YOUTH COURT - JURISDICTION - The youth court has original jurisdiction over the commitment of a mentally ill juvenile only where that juvenile is already in youth court jurisdiction as abused, neglected, delinquent, in need of supervision, or dependent

FACTS

On September 29, 2014, N.M. was born to M.M. and S.M. ("the Parents"). N.M.'s seven siblings had been adjudicated as neglected children and placed into foster homes in custody of the Mississippi Department of Human Services. DHS conducted a hearing and N.M. was also placed in DHS's custody. At an adjudication hearing, the judge ruled N.M. to be "a child in need of special care." On May 27, 2015, the Parents moved to set aside the judgment under Miss. R. Civ. P. 60(b)(4) because the youth court did not have personal or subject matter jurisdiction over N.M. After two continuances, the judge denied the Parents' motion to set aside the judgment. The Parents appealed.

ISSUE

Whether the youth court's judgment is void for lack of jurisdiction over N.M.

HOLDING

Because the youth court did not make a specific finding of neglect in regards to N.M., the youth court was without jurisdiction. The Court of Appeals found that the youth court judge must make a finding that a child is within the jurisdiction of the court pursuant to the Youth Court Act before the court can adjudge a child as special needs. Therefore, the Court of Appeals reversed and remanded the case to the Marion County Youth Court.

Reversed & Remanded - 2015-CA-01621-COA (Apr. 11, 2017)

Opinion by Judge Barnes

Hon. Michael H. Ward (Marion County Youth Court)

Pamela L. Nelson for Appellants - Marion Earl Scales & Scott Phillips for Appellee

Briefed by [Blake Brookshire](#)

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PAIGE ELEC. CO. V. DAVIS & FEDER, P.A.

CIVIL - CONTRACT

CONTRACTS - ARBITRATION CLAUSE - WAIVER - Participation in arbitration proceedings waives the right to object to an arbitrator's authority, as a party cannot sit silent, wait until an adverse award is issued, and then first argue that the arbitrator did not have authority to even hear the claim

CONTRACTS - ARBITRATION CLAUSE - UNCONSCIONABILITY - Whether an arbitration clause is procedurally unconscionable can be shown by lack of knowledge, lack of voluntariness, inconspicuous print, the use of complex legalistic language, disparity in sophistication or bargaining power of the parties, and/or lack of opportunity to study the contract and inquire about the terms

CONTRACTS - ARBITRATION CLAUSE - BROAD LANGUAGE - Broad arbitration language governs disputes related to or connected with a contract, and it is capable of expansive reach, meaning it is only necessary that the dispute touch matters covered by the contract to be subject to arbitration

CONTRACTS - ARBITRATION - VACATING AWARD - Miss. Code Ann. § 11-15-23 provides that the only grounds on which an arbitrator's decision may be vacated are when: (1) the award was procured by corruption, fraud,

or undue means; (2) partiality or corruption on the part of one or more of the arbitrators is evident; (3) the arbitrators were guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown or in refusing to hear evidence that is pertinent or material; (4) the arbitrator was guilty of other misbehavior that prejudices the rights of a party; or (5) the arbitrators exceeded their powers or so imperfectly executed them that a mutual, final, and definite award on the subject matter was not made

FACTS

Southern Construction Services (“SCS”) hired Paige Electric to provide electrical contracting on construction projects, but SCS failed to pay Paige. Paige then hired Davis & Feder to handle its claim against SCS. Paige entered into a Retainer Agreement with Davis & Feder, which contained an arbitration clause providing for arbitration of any dispute arising from or related to the Agreement. Although Davis & Feder obtained a judgment against SCS, SCS was insolvent, and Davis & Feder failed to bring suit regarding a construction lien. Paige filed a malpractice suit against Davis & Feder, and Davis & Feder moved to dismiss the complaint. The Harrison County Circuit Court entered an order referring the case to arbitration. The arbitrator dismissed Paige’s claims with prejudice, but Paige moved to declare the clause invalid or, in the alternative, to sever the claims involving the lien from the agreement and moved to vacate the award as beyond the scope of the arbitration agreement. The circuit court denied both motions, confirmed the arbitrator’s award, and dismissed Paige’s claims with prejudice. Paige appealed.

ISSUES

Whether the trial court erred in (1) denying Paige’s motion to declare the arbitration clause invalid; (2) failing to sever the lien claims from the arbitration clause; and (3) denying the motion to vacate the arbitration award.

HOLDING

(1) Because Paige agreed to an arbitration clause that took up a full page in a simply worded five-page agreement and because Paige did not object to arbitration prior to or during the arbitration process, the trial court did not err in denying the motion to declare the arbitration clause invalid. As Mississippi had not addressed the issue, the Court of Appeals adopted this rule from other jurisdictions: participation in arbitration proceedings waives a party’s right to object to the validity of the arbitration clause and authority of the arbitrator. (2) Because the arbitration clause employed broad language and the lien claim was directly related to Paige’s other claim, the trial court did not err in failing to sever the lien claim. (3) Because nothing in the record indicated that the arbitrator refused to review the case, had any preconceived notions or opinions, or indicated what evidence he focused on, the trial court did not err in denying the motion to vacate the arbitration award. Therefore, the Court of Appeals affirmed the judgment of the Harrison County Circuit Court.

Affirmed - 2015-CA-01658-COA (Apr. 11, 2017)

Opinion by Judge Barnes

Hon. Lisa P. Dodson (Harrison County Circuit Court, First Judicial District)

Blewett W. Thomas for Appellant - James Grady Wyly III, Kyle Stuart Moran, & Adam Blake Harris for Appellee

Briefed by [Alison Guider](#)

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WHITLOCK V. LADNER

CIVIL - OTHER

STANDARD OF REVIEW - ADMINISTRATIVE AGENCIES - SCOPE - The decision of an administrative agency shall not be disturbed unless it is unsupported by substantial evidence, arbitrary or capricious, beyond the agency’s scope or power, or violative of the constitutional or statutory rights of the aggrieved party

SERVICE OF PROCESS - STATE AGENCIES - ATTORNEY GENERAL - Service of process upon the State of Mississippi or any one of its departments, officers, or institutions shall be made by delivering a copy of the summons and complaint to the attorney general of the State of Mississippi

CIRCUIT COURT - JURISDICTION - DEFAULT JUDGMENT - Before a default judgment can be entered, a party must be effectively served with process before the circuit court can have jurisdiction over the party against whom the judgment is sought

CONSTITUTIONAL RIGHTS - DUE PROCESS - DEPRIVATION OF RIGHTS - In order to have a valid procedural or substantive due-process claim, the claimant must show that he has been deprived by the government of a liberty or property interest; otherwise no right to due process can accrue

PRISONERS - DUE PROCESS - LOSS OF PRIVILEGES - A prisoner's temporary loss of privileges is only a change in the condition of his confinement and does not implicate due process concerns

FACTS

Leroy Myers witnessed a prisoner, Tremayne Whitlock, in possession of major contraband. The hearing officer, Latisha Brooks, reclassified Whitlock to a different housing unit and temporarily revoked his privileges. Whitlock appealed this decision, but a warden, Brian Ladner, upheld Brooks's decision. Whitlock filed a complaint against Ladner, Brooks, and Myers, but the circuit court affirmed the Mississippi Department of Corrections' (MDOC) decision and dismissed the complaint. Whitlock appealed.

ISSUES

Whether (1) the trial court erred in failing to enter a default judgment; (2) Whitlock was denied due process under the Fourteenth Amendment; and (3) the trial court erred in stating that the MDOC's decision was supported by substantial evidence and was not arbitrary and capricious.

HOLDING

(1) Because Whitlock failed to properly serve MDOC, Ladner, Brooks, or Myers, the trial court lacked jurisdiction and could not enter a default judgment. (2) Because Whitlock was not deprived of a liberty or property interest, his due-process claim failed. (3) Because there was evidence supporting that Whitlock possessed major contraband, MDOC's decision was not arbitrary or capricious. Therefore, the Court of Appeals affirmed the judgment of the Rankin County Circuit Court.

Affirmed - 2016-CP-00551-COA (Apr. 11, 2017)

Opinion by Presiding Judge Griffis

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

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

Briefed by [Desire'e Martinelli](#)

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COURT OF APPEALS - POST-CONVICTION RELIEF

ATKINSON V. STATE

CIVIL - POST-CONVICTION RELIEF

CRIMINAL PROCEDURE - INDICTMENT - HABITUAL OFFENDER - To be sentenced as a habitual offender, all that is required is that the accused be properly indicted as a habitual offender, that the prosecution prove the prior offenses by competent evidence, and that the defendant be given a reasonable opportunity to challenge the prosecution's proof; the requirement that the State prove the existence of the prior convictions beyond a reasonable doubt is negated by the defendant's decision to enter a guilty plea

CRIMINAL PROCEDURE - INDICTMENT - HABITUAL OFFENDER - Admissions to prior criminal convictions are sufficient to permit a finding of habitual offender status

CRIMINAL PROCEDURE - INDICTMENT - NOTICE OF AMENDMENT - Rule 7.09 of the Uniform Rules of Circuit and County Court provides for the amendment of an indictment to charge a defendant as a habitual offender, but the rule does not explicitly speak to the timing of the amendment; however, the rule implicitly recognizes a right to fair notice by prohibiting amendments to an indictment where the defendant is not afforded a fair opportunity to present a defense or is unfairly surprised

CRIMINAL PROCEDURE - INDICTMENT - NOTICE OF AMENDMENT - It is permissible to amend the indictment on the date of trial and to charge the defendant as a habitual criminal when defense counsel is aware of the State's intentions and the defendant is fully aware of the State's intentions during plea negotiations

CRIMINAL PROCEDURE - INEFFECTIVE ASSISTANCE OF COUNSEL - Under *Strickland v. Washington*, a claimant of ineffective assistance of counsel bears the burden of proof to show that (1) counsel's performance was deficient and (2) the deficiency prejudiced his defense, and the allegations must be made with specificity and be supported by affidavits other than the defendant's; in the context of guilty pleas, this means that the defendant must show that, but for counsel's errors, he would not have pled guilty

FACTS

Mark Atkinson was indicted on three drug charges, including possession of methamphetamine, possession of hydrocodone, and possession of methamphetamine precursors. The State filed a motion to amend the indictment to reflect his status as a habitual offender. At the plea hearing, as evidence of Atkinson's two prior felony convictions, the State entered into evidence a sentencing order from Lowndes County to show that Atkinson had previously been convicted of the sale of marijuana and a certified pen pack from the Marion County Circuit Court in Alabama to show that Atkinson had previously been convicted of possession of a controlled substance. Atkinson raised no objection to the State's motion, and the motion to amend the indictment was granted. Pursuant to a plea agreement, Atkinson pled guilty to the first count, and the State retired the other two counts. The circuit court found that Atkinson entered his guilty plea knowingly, voluntarily, and intelligently. Atkinson's guilty plea was accepted, and he was sentenced to serve eight years in prison without the possibility of parole and to pay a fine of \$50,000. Atkinson filed a motion for post-conviction relief, which the trial court dismissed. Atkinson appealed.

ISSUES

Whether (1) Atkinson was improperly sentenced as a habitual offender; (2) Atkinson's indictment failed to give him sufficient notice; and (3) Atkinson received ineffective assistance of counsel.

HOLDING

(1) Because Atkinson raised no objection to the State's motion to amend the indictment and admitted under oath in open court to the two previous felony convictions, his argument that the trial court improperly sentenced him as a habitual offender lacked merit. (2) Because Atkinson signed the plea petition indicating that he understood that the State planned to charge him as a habitual offender and what the maximum sentence would be if he pled guilty as a habitual offender, Atkinson's claim lacked merit since he received sufficient notice of the State's intention to amend his indictment as well as a fair opportunity to present a defense to the amendment. (3) Because Atkinson offered no proof that his attorney's performance fell below an objective standard of reasonableness, or that, but for his attorney's alleged errors, he would not have pled guilty, Atkinson's ineffective assistance of counsel claim was without merit. Therefore, the Court of Appeals affirmed the judgment of the Lowndes County Circuit Court.

Affirmed - 2016-CP-00024-COA (Apr. 11, 2017)

Opinion by Judge Carlton

Hon. Lee J. Howard (Lowndes County Circuit Court)

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

Briefed by [Mallory Bland](#)

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DRANKUS V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - TRIAL COURT'S JURISDICTION - SET OFF - Trial courts do not have jurisdiction to hear an appeal of the parole board's decision to set off a prisoner's next parole hearing

POST-CONVICTION RELIEF - PAROLE - RETROACTIVE APPLICABILITY - Pursuant to Miss. Code Ann. § 47-7-18(6), any inmate not released at the time of the inmate's initial parole date shall have a parole hearing at least every year; however, the Mississippi Supreme Court has stated that this amendment does not apply to prisoners who were admitted prior to the amendment's effective date

FACTS

In 1987, Drankus was convicted of capital murder, robbery, and burglary. In 2001, he was released on parole, but his parole was revoked in 2006 for numerous violations. Drankus was again paroled in 2007, but he once again violated numerous parole conditions and was returned to custody in 2012. The Mississippi Parole Board denied Drankus parole on April 29, 2015, and set his next parole hearing for April 30, 2018. Drankus then filed a post-conviction relief (PCR) motion claiming he was entitled to a parole hearing at least every year pursuant to Miss. Code Ann. § 47-7-18(6); thus, this three-year set off violated his constitutional and statutory rights. The trial court denied Drankus's motion, finding that it was a successive writ since Drankus had filed a prior PCR motion in 1996 and that it did not have jurisdiction over parole matters. Drankus appealed.

ISSUE

Whether the trial court had jurisdiction to address the merits of Drankus's PCR motion.

HOLDING

Because trial courts have no jurisdiction to grant or deny parole and the recent amendments to parole statutes do not apply to prisoners admitted prior to the amendments' effective date, Drankus's motion was properly denied. Therefore, the Court of Appeals affirmed the decision of the Harrison County Circuit Court.

Affirmed - 2016-CP-00320-COA (Apr. 11, 2017)

Opinion by Chief Judge Lee

Hon. Roger T. Clark (Harrison County Circuit Court)

Pro se for Appellant - Darrell C. Baughn & Anthony Louis Schmidt Jr. for Appellee

Briefed by [Joseph Rychlak](#)

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COURT OF APPEALS - CRIMINAL CASES

DUCK V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - SENTENCING - HABITUAL OFFENDER - Pursuant to Miss. Code Ann. § 99-19-81, to be sentenced as a habitual offender, the State must prove that the defendant had been convicted twice previously of any felony or federal crime upon charges separately brought and arising out of separate incidents at different times and sentenced to separate terms of one year or more in any state and/or federal penal institution, whether in this state or elsewhere

CRIMINAL LAW - EVIDENCE - DOCUMENTARY EVIDENCE - A judgment of conviction is the best evidence of a prior conviction; however, other forms of evidence, including certified copies of docket entries, are allowed

CRIMINAL LAW - TRIALS - MOTIONS FOR ACQUITTAL - When determining whether the State presented legally sufficient evidence to support the verdict, the critical inquiry is whether the evidence shows beyond a reasonable doubt that the accused committed the act charged, and that he did so under such circumstances that every element of the offense existed; if, viewing the evidence in the light most favorable to the State, any rational trier of fact could have found, beyond a reasonable doubt, that the essential elements of the crime existed, the conviction will be affirmed

CRIMINAL LAW - COUNSEL - INEFFECTIVE ASSISTANCE OF COUNSEL - To establish ineffective assistance of counsel, the defendant must demonstrate: (1) counsel's performance was deficient, and (2) the deficiency prejudiced the defense; trial counsel's failure to object to leading questions, without proof that prejudice resulted, does not amount to ineffective assistance of counsel

FACTS

A confidential informant, Jessica Biglane, contacted an Adams County Sheriff's Department officer and told him that Willie Duck had contacted her to express his interest in selling methamphetamine out of her house. Biglane worked with officers to coordinate a staged drug buy between herself and Duck. Two narcotics unit officers followed Biglane as she picked up Duck. One officer saw Duck sitting in the passenger side of Biglane's car with cash in one hand and a bag containing white rocks in his other hand. The other officer saw Duck drop a plastic bag on the ground as he was exiting the front passenger side of Biglane's vehicle. The bag was seized, and Duck was arrested. The substance in the bag was later determined to be methamphetamine. The Adams County Circuit Court convicted Duck of possession of more than two grams (but less than ten grams) of a controlled substance with intent to sell or distribute and sentenced him as a habitual offender to serve twenty years in prison. Duck appealed.

ISSUES

Whether (1) the trial court erred in sentencing Duck as a habitual offender; (2) the trial court erred in determining he was not entitled to a new trial; (3) the trial court erred in failing to grant Duck's motion for a mistrial; (4) the trial court erred in refusing to grant a new trial based on newly discovered evidence; (5) the trial court erred in finding the evidence was sufficient to support the verdict; and (6) Duck's trial counsel provided ineffective assistance.

HOLDING

(1) Because a certified document was sufficient proof of a prior conviction, the trial court did not err in sentencing Duck as a habitual offender. (2) Because Duck did not produce any evidence to demonstrate prejudice resulting from a witness's presence in the courtroom during part of the State's opening argument, the trial court did not err in refusing to grant a new trial. (3) Because a prior witness testified at trial that the substance found in the bag that Duck dropped tested positive for methamphetamine, the trial court did not abuse its discretion in denying Duck's motion for a mistrial. (4) Because Duck failed to show how the new evidence of an alleged officer's statement of "I got you!" would have produced a different result at trial, he was not entitled to a new trial. (5) Because two agents saw Duck exit the vehicle and drop a bag containing a substance that was later determined to be methamphetamine, there was sufficient evidence to support the verdict. (6) Because there was no proof that prejudice resulted from the failure of Duck's trial counsel to object to two leading questions, his trial counsel was not ineffective. Therefore, the Court of Appeals affirmed the judgment of the Adams County Circuit Court.

Affirmed - 2016-KA-00362-COA (Apr. 11, 2017)

Opinion by Chief Judge Lee

Hon. Forrest A. Johnson Jr. (Adams County Circuit Court)

W. Daniel Hinchcliff (Pub. Def. Office) for Appellant - Barbara Wakeland Byrd (Att'y Gen. Office) for Appellee

Briefed by [Kaitlyn McMellon](#)

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MAXWELL V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - POST-CONVICTION COLLATERAL RELIEF - FILING DEADLINE - A Post-Conviction Collateral Relief petition that asks for leave to file an out-of-time appeal must be filed within three years after the time in which the petitioner's direct appeal is ruled upon, and is subject to a procedural bar if not filed within this time frame

CRIMINAL LAW - PROCEDURAL BAR - EXCEPTION - There are exceptions to a procedural bar, such as an intervening decision of the Mississippi Supreme Court that would have adversely affected the outcome of the conviction or sentence

CRIMINAL LAW - POST-CONVICTION AMENDMENT OF INDICTMENT - GOWDY STANDARD - An amendment to the indictment to allege habitual offender status after conviction is an unfair surprise and is not allowed under Uniform Rule of Circuit and County Court 7.09

CRIMINAL LAW - GOWDY STANDARD - RETROACTIVITY - The rule announced in *Gowdy* does not apply retroactively to cases that were final before April 7, 2011, the date the mandate was issued in *Gowdy*

FACTS

Robert A. Maxwell was found guilty of manslaughter. Following his conviction, but before sentencing, the State moved to amend the indictment to charge Maxwell as a habitual offender, which was granted. Maxwell petitioned for post-conviction collateral relief (PCCR), requesting an out-of-time appeal. The circuit court granted the PCCR motion and allowed Maxwell leave to file an out-of-time appeal with the court. On appeal, Maxwell argued the trial court erred in allowing the State to amend his indictment after conviction to charge him as a habitual offender.

ISSUES

Whether (1) Maxwell's appeal is an out-of-time appeal subject to a procedural bar; and (2) an intervening decision of the Supreme Court, disallowing the State to amend an indictment after conviction when it results in an unfair surprise, operates as an exception to the procedural bar.

HOLDING

(1) Because Maxwell did not file his appeal within three years after the time in which his direct appeal was ruled upon, it was an out-of-time appeal subject to the procedural bar. (2) Because the Supreme Court's ruling that disallows the State to amend an indictment after conviction does not apply retroactively, it is not an exception to the procedural bar. Therefore, the Court of Appeals affirmed the judgment of the Lincoln County Circuit Court.

Affirmed - 2015-KA-01899-COA (Apr. 11, 2017)

Opinion by Presiding Judge Griffis

Hon. David H. Strong Jr. (Lincoln County Circuit Court)

George T. Holmes & Erin E. Pridgen (Pub. Def. Office) for Appellant - Joseph Scott Hemleben & Jason L. Davis (Att'y Gen. Office) for Appellee

Briefed by [Kyle Hansen](#)

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PARKS V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - JURY INSTRUCTIONS - REVIEW - Jury instructions must be read as a whole to determine if the instructions were proper; if all instructions taken as a whole fairly, but not necessarily perfectly, announce the applicable rules of law, no error results

EVIDENCE - WITNESS TESTIMONY - CAUSE OF DEATH - The criminal agency or cause of death is usually shown by witnesses who saw the homicide, or by circumstances sufficient to establish the crime to the exclusion of every other reasonable hypothesis; in such cases, neither an autopsy nor expert medical opinion is necessary

EVIDENCE - OBJECTIONS - APPEAL - A defendant is procedurally barred from asserting an issue on appeal if he fails to object to the statements during trial

CRIMINAL PROCEDURE - MOTION FOR NEW TRIAL - WEIGHT OF THE EVIDENCE - When reviewing a denial of a motion for a new trial based on an objection to the weight of the evidence, a court will only disturb a verdict when it is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice

FACTS

William Parks claimed that he shot and killed Joshua Tarver in self-defense, but a Covich County jury convicted him of heat-of-passion manslaughter. The circuit court sentenced Parks to twenty years in the custody of the Mississippi Department of Corrections, with two years suspended and two years of post-release supervision. Parks filed a motion for a judgment notwithstanding the verdict or a new trial, which was denied. Parks appealed.

ISSUES

Whether (1) the trial court erred in granting the State's jury instruction on heat-of-passion manslaughter; (2) Evans, the deputy medical examiner, was qualified or competent to testify about the cause of death or Dr. Barnhart's autopsy findings; and (3) there was insufficient evidence to support the jury's verdict, or in the alternative, that the verdict was against the overwhelming weight of the evidence.

HOLDING

(1) Because there was sufficient evidence to support the jury's verdict finding Parks guilty of manslaughter, the trial court did not err in granting the State's heat-of-passion manslaughter jury instruction. (2) Because Parks admitted he shot Tarver, and Tarver was found dead at the scene with significant blood loss and obvious bullet wounds, the evidence was sufficient to establish the cause of death without expert testimony, thus making Evans competent to testify about the cause of death. Additionally, Parks did not preserve an objection on the ground that his rights under the Confrontation Clause were violated by Evans testifying about Dr. Barnhart's autopsy findings, so the issue was procedurally barred. (3) Because a rational trier of fact could have concluded that Parks believed Tarver had burglarized his shop and that Tarver's return to the scene of the suspected crime aroused Parks's anger and led him to kill Tarver, Parks was not entitled to a judgment of acquittal. In addition, Park's testimony did not clearly overwhelm the evidence supporting the jury's guilty verdict. Therefore, the Court of Appeals affirmed the judgment of the Covich County Circuit Court.

Affirmed - 2015-KA-01462-COA (Apr. 11, 2017)

Opinion by Judge Wilson

Hon. Lamar Pickard (Covich County Circuit Court)

Matthew Allen Baldridge & Benjamin Freeman Robinson for Appellant - Barbara Wakeland Byrd & Alexander C. Martin (Att'y Gen. Office) for Appellee

Briefed by [Lora Wuerdeman](#)

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