

MISSISSIPPI SUPREME COURT DECISIONS – AUGUST 13, 2020***SUPREME COURT - CIVIL CASES*****IN RE ESTATE OF BLACKBURN V. RICHARDS****CIVIL - WILLS, TRUSTS, & ESTATES**

WILLS & ESTATES - TRUST REFORMATION - TESTATOR'S INTENT - When the testator's true intent becomes ambiguous due to a drafting mistake, such as a scrivener's error, the court should take into consideration the attending circumstances of the testator, testamentary documents themselves, and the general intent of the whole will, disregarding technical rules and adjudicated cases that might stand in the way of the will's execution

WILLS & ESTATES - AWARDS - ATTORNEY'S FEES - Miss. Code Ann. § 91-8-1004(a) states that, in a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the trust that is subject of the controversy

FACTS

Before his death, attorney Barry Blackburn executed a revocable living trust to provide income to his only son, Christopher. After many recorded conversations with Barry, Kimberly Archer and Ginger Richards, co-trustees, used "cut-and-paste" systems from other forms to generate a trust based on Barry's intent for his estate. One trust provision, Section 2.3(D)(3), stipulated that Barry's assets were to pass to Christopher's children upon Christopher's death. Section 2.3(D)(3) then stated that, "If [Christopher] shall predecease [Barry]...and has no living trust, then the remaining trust principal shall be retained for the benefit of Rebecca Lowry's children" (Barry's nieces and nephews). If Barry had no surviving beneficiaries, then his estate would be equally split among Nashville Christian School, Harpeth Presbyterian Church, Ole Miss Law School, and the Boykin Spaniel Rescue. Upon Christopher's death one year after Barry's death, June Holley Olin, administratrix of Christopher's estate, believed that Barry's trust belonged to Christopher's estate because Christopher did not predecease his father as technically stipulated in Section 2.3(D)(3). The nonprofit entities also believed that Lowry's children did not satisfy the section's condition precedent but that the nonprofits were the beneficiaries because Christopher had no living issue. Believing the beneficiaries to be Barry's nieces and nephews, Archer and Richards commenced instant action in DeSoto County Chancery Court, requesting that the chancery court construe the trust consistent with Barry's intent. Olin claimed that Christopher's estate was the beneficiary and that \$200,000 was vested for planned college payments, even though Olin produced no evidence of Christopher's actual enrollment. The nonprofits claimed that they were the primary beneficiaries. The chancery court found that Section 2.3(D)(3) was ambiguous because of Archer's borrowed phrasings from outside documents. After hearing from witness testimony and reviewing uncontroverted evidence, the chancery court stated that Barry clearly intended for his nieces and nephews to be the beneficiaries. The chancery court also awarded the parties' and non-profits' attorneys' fees from the trust. Olin and the non-profits appealed the reformation of Section 2.3(D)(3), and Archer, Richards, and Lowry cross-appealed the award of attorney's fees.

ISSUES

Whether the chancery court erred in (1) reforming Section 2.3(D)(3) of the trust; (2) denying coverage of Christopher's college expenses; and (3) awarding attorney's fees paid from the trust.

HOLDING

(1) Because Barry's true intention was supported by clear and convincing evidence, Barry's nieces and nephews were the trust's beneficiaries. (2) Because no evidence was ever submitted that Christopher actually attended college after Barry's death, Christopher's estate could not be compensated. (3) Because this case was uncomplicated yet heavily

litigated, the chancery court failed to show that the attorneys' fees were reasonable, just, and equitable. Therefore, the Supreme Court affirmed the judgment of the DeSoto County Chancery Court on direct appeal and reversed and remanded judgment on cross-appeal.

On Direct Appeal: Affirmed. On Cross-Appeal: Reversed & Remanded - 2018-CA-01052-SCT (Aug. 13, 2020)

Opinion by Justice Beam

Hon. Mitchell M. Lundy Jr. (DeSoto County Chancery Court)

John Thomas Lamar III & Taylor Allison Heck for Appellant - Harris H. Barnes III, Michael Kevin Graves, Gordon Charles Shaw Jr., James Williams Janoush, J. Cal Mayo Jr., Sarah Katherine Embry, & D. Pace Branan for Appellees

Briefed by [Rod Bridges](#)

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MISS. DEP'T OF REVENUE V. COMCAST OF GEORGIA/VIRGINIA, INC.

CIVIL - STATE BOARDS & AGENCIES

TAXATION - FRANCHISE TAX - CAPITAL BASE - Under Miss. Code Ann. § 27-13-9(2), a holding corporation can exclude the book value of the holding corporation's investment in stock or securities of its subsidiary corporation

TAXATION - FRANCHISE TAX - PETITION FOR TRUE VALUE OF CAPITAL - Under Miss. Code Ann. § 27-13-11, a taxpayer may set forth facts showing the true value of its capital when it believes the Mississippi Department of Revenue's computations do not properly reveal the true franchise tax to be due

TAXATION - FRANCHISE TAX - APPORTIONMENT - Miss. Code Ann. § 27-13-13(1) states the ratio of capital employed in the state shall be computed by calculating the ratio between (1) the real and tangible personal property owned in Mississippi and gross receipts from business carried on in Mississippi and (2) the total real and tangible personal property owned and gross receipts wherever located and from wherever received

FACTS

Comcast Communications, LLC ("Comcast") held investments in over fifty subsidiaries, two of which have connections in Mississippi. Comcast also held minority passive-investment interests in approximately ten "non-unitary subsidiaries" that have no connections to Mississippi. In calculating its capital base for each year, Comcast excluded certain amounts of capital utilizing the holding company exception on Line 8 of the Mississippi Corporate Franchise Tax Schedules. In calculating its apportionment ratios for each year, Comcast did not include all of its Mississippi destination sales as gross sales in the apportionment formula. After conducting an audit of Comcast's Franchise Tax Returns, the Mississippi Department of Revenue ("MDOR") disallowed Comcast's holding-company exclusion and included all of Comcast's Mississippi destination sales as gross receipts. The MDOR concluded Comcast's preapportioned capital base and its Mississippi apportionment ratios should be increased for each applicable year. Thereafter, the MDOR issued an assessment of additional franchise tax for each year. Comcast appealed to the MDOR's Board of Review, and the Board of Review upheld the assessment. Comcast subsequently appealed to the Mississippi Board of Tax Appeals, and the Mississippi Board of Tax Appeals reduced the assessment. The MDOR then appealed to the Hinds County Chancery Court. The Hinds County Chancery Court granted Comcast's motion for summary judgment and dismissed with prejudice the MDOR's petition. The MDOR appealed.

ISSUE

Whether the franchise-tax statutes allow Comcast to exclude from its capital base the investments in its subsidiaries and to use an alternate apportionment method.

HOLDING

Because the non-unitary subsidiaries have no connection to Comcast's business in Mississippi, and because the MDOR's tax assessment produced a distortive or an unreasonable result and did not fairly represent the true value of Comcast's capital employed in Mississippi, Comcast could exclude the investments in its subsidiaries from its capital base and use

an alternate apportionment method. Therefore, the Supreme Court affirmed the judgment of the Hinds County Chancery Court.

Affirmed - 2019-CA-01134-SCT (Aug. 13, 2020)

Opinion by Justice Griffis

Hon. J. Dewayne Thomas (Hinds County Chancery Court, First Judicial Dist.)

Bridgette T. Thomas & John S. Stringer for Appellant - Sheldon G. Austin, Louis G. Fuller, Daniel H. Schlueter, Jeffrey A.

Friedman, Maria M. Todorova, & Alla Raykin for Appellee

Briefed by [William "Jack" Simpson](#)

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MISS. DEP'T OF REVENUE V. SBC TELECOM, INC.

CIVIL - STATE BOARDS & AGENCIES

ADMINISTRATIVE LAW - BOARD OF TAX APPEALS - AGENCY APPEAL - The pre-amendment version of Miss. Code Ann. § 27-77-7(4) requires that if the petition for appeal is filed by the agency, the agency shall refund or credit to the taxpayer the amount of any overpayment included in the refund claim which the agency does not contest; failure of the agency to timely pay the uncontested overpayment to the taxpayer shall result in the agency's appeal or cross-appeal being dismissed with prejudice

ADMINISTRATIVE LAW - STATUTORY INTERPRETATION - INITIAL INQUIRY - When considering the interpretation of a statute, the initial inquiry is whether the statute is ambiguous with no deference afforded to the agency's interpretation of the statute; if the words of a statute are clear and unambiguous then the plain meaning is applied

ADMINISTRATIVE LAW - STATUTORY INTERPRETATION - LEGISLATIVE INTENT - The primary rule of statutory interpretation is to ascertain the intent of the legislature from the statute as a whole including any legislation contradicting the plain meaning of the statute at issue

ADMINISTRATIVE LAW - DEPARTMENT OF REVENUE - BROADBAND INVESTMENT CREDITS - Miss. Code Ann. § 57-87-5(3) limits broadband credits that a taxpayer may take in any given year to fifty-percent of the aggregate of the taxpayers' franchise-tax liability and the total combined income-tax liability of the affiliated group

FACTS

Under Miss. Code Ann. § 57-87-5, AT&T Mobility II, LLC, and BellSouth Telecommunications generated Broadband Investment Credits ("broadband credits"). SBC Telecom and several affiliated taxpaying entities (collectively "the Taxpayers") were all direct or indirect corporate owners of AT&T Mobility II. In 2010, each taxpayer filed separate franchise-tax returns and was included in the combined corporate income-tax return filed on behalf of SBC Ally Holdings, Inc. & Affiliates under Miss. Code Ann. § 27-7-37, which permits members of an affiliated group to file one combined income-tax return and makes each member jointly and severally liable for the entire amount of the income-tax liability. In 2014, each taxpayer amended its 2010 franchise-tax return to utilize additional broadband credits and claim a franchise-tax refund. In 2014, the Mississippi Department of Revenue ("MDR") denied the taxpayers' refund claims. After the taxpayers filed their 2013 taxes using the same methodology used to compute their allowable broadband credits in 2010, the MDR determined the broadband credits the taxpayers claimed were improperly applied to an amount greater than the credit cap of fifty-percent under Miss. Code Ann. § 57-87-5(3). The taxpayers appealed the decision to the Board of Review, which upheld the MDR's refund denial. The taxpayers appealed the Board of Review's order to the Board of Tax Appeals ("BTA"). The BTA issued an order granting the taxpayers partial relief, but upheld the MDR's denial of refunds and assessments of additional taxes, interest, and penalties. The taxpayers filed their petition for appeal with the Hinds County Chancery Court under Miss. Code Ann. § 27-77-7. The MDR filed its answers and defenses and a year later moved for summary judgment. The taxpayers subsequently filed a cross-motion for summary judgment. The chancery court granted summary judgment in favor of the taxpayers. The MDR appealed, and the taxpayers asserted an additional assignment of error on appeal concerning the chancery court's jurisdiction under the pre-amendment version of Miss. Code Ann. § 27-77-7(4).

ISSUES

Whether (1) the chancery court lacked jurisdiction to hear the taxpayers' appeal under the pre-amendment version of Miss. Code Ann. § 27-77-7(4) and, as such, were required to dismiss with prejudice the MDR's answer and defenses and (2) the chancery court properly interpreted the broadband credit limitation under Miss. Code Ann. § 57-8-5 in its award of summary judgment for the taxpayers.

HOLDING

(1) Because there were no uncontested overpayments in this case, the pre-amendment version of Miss. Code Ann. § 27-77-7(4) did not apply and the chancery court had proper jurisdiction. (2) Because the plain and unambiguous language of Miss. Code Ann. § 57-8-5 limits the broadband credits that a taxpayer may take in any given year to fifty-percent of the aggregate of the taxpayers' franchise-tax liability and the total combined income-tax liability of the affiliated group, the chancery court properly interpreted Miss. Code Ann. § 57-8-5 in its award of summary judgment. Therefore, the Supreme Court affirmed the judgment of the Hinds County Chancery Court.

Affirmed - 2019-CA-00917-SCT (Aug. 13, 2020)

Opinion by Justice Chamberlin

Hon. Tiffany Piazza Grove (Hinds County Chancery Court)

Bridgette T. Thomas & John S. Stringer for Appellant - John F. Fletcher for Appellees

Briefed by [Glory Crocco](#)

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PARKS V. HORTON

CIVIL - ELECTION CONTEST

ELECTION LAW - CONTEST - JUDICIAL REVIEW - Miss. Code Ann. § 23-15-927 states that the filing of the petition for judicial review shall automatically supersede and suspend the operation and effect of the order, ruling or judgment of the executive committee order appealed from

ELECTION LAW - SPECIAL ELECTION - LAWFUL OFFICEHOLDER - Miss. Code Ann. § 23-15-937 states that if the contestee has already entered upon the term she shall vacate the office upon the qualification of the person elected at the special election

FACTS

Margaret Parks was elected as Humphreys County Tax Assessor and Collector in 2015. In 2019, she qualified to run for reelection in the Democratic Primary. Veda Horton also qualified to run. Neither party received a majority of the votes in the August 2019 primary. A runoff was held, and Horton received the most votes. Horton was certified as the Democratic nominee in the general election. Parks then filed an election-contest petition with the Humphreys County Democratic Executive Committee. When the committee failed to respond or act, Parks filed a petition for judicial review with the Humphreys County Circuit Court. In the November 2019 general election, Horton was listed on the ballot and won. Shortly after the election, a special circuit judge presided over the election contest. In January 2020, Horton was sworn into office. The following day, the circuit judge ordered that the primary election be annulled and a special primary election be held to determine the rightful officeholder. Governor Tate Reeves ordered a special election to be held in April 2020. Due to COVID-19, the special election was delayed until August 2020. The circuit judge also ordered that under Miss. Code Ann. § 23-15-937, Horton lawfully holds the office until the winner of the special election is qualified and that Parks was not a holdover of the office. Parks appealed.

ISSUE

Whether the circuit judge erred by deciding to declare Parks the holdover office holder or to declare the office vacant pending the special election.

HOLDING

Because Horton entered the term of office before the final adjudication of the election contest, under Miss. Code Ann. § 23-15-937, Horton is the lawful holder of the office until the special election is held. Therefore, the Supreme Court affirmed the judgment of the Humphreys County Circuit Court.

Affirmed - 2020-EC-00097-SCT (Aug. 13, 2020)

Opinion by Justice Griffis

Hon. Jeff Weill Sr. (Humphreys County Circuit Court)

John R. Reeves for Appellant - Samuel L. Begley for Appellee

Briefed by [Claire Scott](#)

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SUPREME COURT - CRIMINAL CASES

GARDNER V. STATE

CRIMINAL - FELONY

APPELLATE PROCEDURE - APPEAL - NOTICE - Miss. R. App. P. 4(a) provides that a notice of appeal must be filed with the clerk of the trial court within thirty days after the date of entry of the judgment or order appealed from
APPELLATE PROCEDURE - APPEAL - DISMISSAL - Miss. R. App. P. 2(a)(1) states that an appeal must be dismissed if the notice of appeal was untimely

APPELLATE PROCEDURE - APPEAL - EXTENSION - Miss. R. App. P. 2(c) provides that a court may suspend the requirements or provisions of any of these rules in the interest of expediting decision, or for other good cause

FACTS

In 2018, a jury found Jimmie Lashaun Gardner guilty of one count of possession of a Schedule II controlled substance in violation of Miss. Code Ann. § 41-29-139 and one count of felony evasion in violation of Miss. Code Ann. § 97-9-72. The trial court found Gardner to be a subsequent and habitual drug offender under Miss. Code Ann. § 99-19-81. Gardner appealed.

ISSUE

Whether Gardner could appeal his conviction to the Supreme Court.

HOLDING

Because the entry of judgment and conviction was filed on July 31, 2018 and Gardner filed his appeal on September 13, 2018, the appeal was not filed timely as required under Miss. R. App. P. 4(a). Therefore, the Supreme Court dismissed the appeal.

DISSENT

Presiding Justice King argued that the Supreme Court should have granted the out-of-time appeal under Miss. R. App. P. 2(c) because Gardner's untimely appeal was due to his attorney's actions. Therefore, the Supreme Court should have allowed the appeal to proceed on the merits.

Appeal Dismissed - 2018-KA-01337-SCT (Aug. 13, 2020)

Opinion by Justice Coleman - Dissent by Presiding Justice King

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

Hunter N. Aikens & George T. Holmes (Pub. Def. Office) for Appellant - Matthew W. Walton (Att'y Gen. Office) for Appellee

Briefed by [MaryScott Polk](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – AUGUST 11, 2020
COURT OF APPEALS - CIVIL CASES

ADAMS V. CITY OF NATCHEZ

CIVIL - OTHER

CIVIL PROCEDURE - JURISDICTION - STANDING - Parties have standing to sue when they assert a colorable interest in the subject matter of the litigation or experience an adverse effect from the conduct of the defendant, or as otherwise provided by law

CIVIL PROCEDURE - APPEALS - FINAL JUDGMENT - A final, appealable judgment is one that adjudicates the merits of the controversy and settles all the issues as to all the parties and does not require the lower court to take requires further action

CIVIL PROCEDURE - APPEALS - FINAL JUDGMENT - If a decision is based on contingencies or interpreted as conditional, it does not constitute a final, appealable decision

FACTS

The City of Natchez (“the City”) acquired the Old General Hospital from the State of Mississippi. The Old General Hospital was declared surplus property and authorized for sale. The City published its request for proposals (“RFP”), which required sealed proposals to include a \$5,000 deposit in the form of a certified cashier’s check. The City received two proposals, including one from Magnolia Medical Foundation, but neither submitted the required deposit. The City decided to enter negotiations with the Magnolia Medical Foundation to develop the Old General Hospital site. Subsequently, the City passed a motion accepting the Magnolia Medical Foundation’s offer contingent on the fulfillment of certain requirements, including the funds in the proposal. In response to the City’s acceptance of the offer, two separate actions were filed, one by a group of residents living in the neighborhood surrounding the Old General Hospital (“Neighbors”) and the other by Ginger Hyland and Charlotte Copeland, two residents and business owners in Natchez. The City filed its answers and motions to dismiss both cases. The circuit court judge found in favor of Hyland and Copeland and reversed the City’s action, but granted the City’s motion to dismiss against the Neighbors and ordered the appeal to be dismissed without prejudice. The Neighbors and the City appealed.

ISSUES

(1) Whether the Neighbors had standing to appeal the City’s decision and (2) whether the City’s action constituted a final, appealable decision giving the circuit court jurisdiction to hear the appeals.

HOLDING

(1) Because the Neighbors were residents and property owners near the Old General Hospital Site, and because the City transferring the Old General Hospital to the Magnolia Medical Foundation would adversely affect their properties, the Neighbors had standing to contest the City’s decision. (2) Because the City’s decision to pass the conditional motion to accept Magnolia Medical Foundation proposal was not a final appealable decision, the circuit court lacked jurisdiction to hear both appeals. Therefore, the Court of Appeals affirmed the judgment on the Neighbors’ appeal and reversed and vacated the judgment against the City by the Adams County Circuit Court.

Affirmed - 2019-CA-00500-COA (Aug. 11, 2020)

En Banc Opinion by Judge Anthony N. Lawrence III
Hon. Lillie Blackmon Sanders (Adams County Circuit Court)
Paul Draughn Sullivan for Appellants - Robert C. Latham for Appellees

Consolidated with:

Reversed & Vacated - 2019-CA-00765-COA (Aug. 11, 2020)

Hon. Debra W. Blackwell (Adams County Circuit Court)
Robert C. Latham for Appellant - Lester Joseph Meng III & Mark D. Morrison for Appellees
Briefed by [Fatelia Avery](#)

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MURPHY V. WILLIAM CAREY UNIV.

CIVIL - PERSONAL INJURY

TORTS - MEDICAL MALPRACTICE - BURDEN OF PROOF - Negligence cannot be established without medical testimony that the defendant failed to use ordinary skill and care

CONTRACTS - BREACH - ELEMENTS - In a breach of contract claim, the plaintiff must prove (1) the existence of a valid and binding contract; (2) the defendant has breached the contract; and (3) the defendant has been damaged monetarily

TORTS - NEGLIGENT HIRING - BURDEN OF PROOF - A plaintiff must prove the defendant had either actual or constructive knowledge of an employee's incompetence or unfitness before the employer will become liable for the negligent hiring or retention of an employee who injures a third party

CIVIL PROCEDURE - MOTION PRACTICE - ADVERSE INFERENCE INSTRUCTION - Evidence or argument from a pretrial hearing is not a basis for spoliation instruction because the jury must hear the evidence at trial for the jury instruction to be proper

FACTS

In April 2013, Abigail Murphy, a student of osteopathic medicine at William Carey University ("William Carey"), participated in a Clinical Skills Assessment ("CSA"), which included a practical and written examination. In the course of the physical examination, assistant professor Dr. Richard Margaitis re-administered a sacral spring test on Murphy. An hour or two after the test, Murphy began experiencing pain and swelling in her sacrum region. A couple weeks after the CSA, Murphy approached Dr. Tanisha Hayes, another professor at William Carey, and Dr. Margaitis to report that she suffered from chronic back pain as a result of the test Dr. Margaitis had performed. Murphy sought treatment from Dr. Margaitis and Dr. Jones, the Chair of the Osteopathic Principles and Practice Department at William Carey, but her pain persisted. Murphy visited numerous doctors and received an assortment of treatments and tests for sacroiliac joint pain. Murphy subsequently filed suit in the Forrest County Circuit Court against William Carey, Dean James Turner, and Dr. Margaitis, alleging negligence, breach of contract, and negligent hiring, training, and/or supervision. After two years of discovery, William Carey, Dean Turner, and Dr. Margaitis moved for summary judgment, contending there were no genuine issues of material fact and that they were entitled to judgment as a matter of law. The Forrest County Circuit Court granted the motion for summary judgment on each claim and dismissed the action. Murphy appealed.

ISSUES

Whether the circuit court erred by (1) granting summary judgment on the negligence claim; (2) granting summary judgment on the breach-of-contract claim; (3) granting summary judgment on the negligent hiring, training, and/or supervision claim; and (4) denying the motion for adverse-inference instruction.

HOLDING

(1) Because Murphy provided probative evidence through the affidavits of expert witnesses that conflicted with the argument that Dr. Margaitis complied with the requisite standard of care at the time he performed the sacral spring test, genuine issues of fact existed and the circuit court erroneously granted summary judgment on the negligence claim. (2) Because Murphy did not sufficiently show what term of the implied contract was breached, and because Murphy did not show a genuine issue of material fact, the circuit court properly granted summary judgment on the breach-of-contract claim. (3) Because Murphy failed to set forth probative evidence showing that William Carey or Dean Turner negligently hired, supervised, and/or trained Dr. Margaitis, the circuit court properly granted summary judgment on the negligent hiring, training, and/or supervision claim. (4) Because this case was disposed prior to trial, and because the circuit court does not know what evidence regarding spoliation will be presented to the jury, it would be premature and inappropriate to mandate that the trial court give a spoliation instruction at trial. Therefore, the Court of Appeals affirmed in part and reversed and remanded in part the judgment of the Forrest County Circuit Court.

CONCURRENCE IN PART/DISSENT IN PART

Presiding Judge Wilson argued that Murphy failed to show that there was a genuine dispute of material fact on the issue of proximate causation because the affidavits of Murphy's expert witnesses fail to provide facts to explain the link between the alleged negligence and Murphy's complaints of pain. He dissented with the majority's reversal of the motion for summary judgment on Murphy's negligence claim.

Affirmed in Part; Reversed & Remanded in Part - 2018-CA-00910-COA (Aug. 11, 2020)

Opinion by Judge Greenlee - Concurrence in Part & Dissent in Part by Presiding Judge Wilson
Hon. Robert B. Helfrich (Forrest County Circuit Court)

Bradley S. Clanton & Laura McKee Zouein for Appellant - Heber S. Simmons III, Dorrance Aultman, Dorrance Dee Aultman Jr.,
Matthew Lee Harris, & Jessica Leigh Dilmore for Appellees

Briefed by [Cecelia Hurt](#)

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COURT OF APPEALS - POST-CONVICTION RELIEF

HARRIS V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - PROCEDURAL BAR - EXCEPTIONS - Where a petitioner for post-conviction relief asserts a fundamental right, the court must address the merits of the PCR petition regardless of procedural bars; overcoming the procedural bars requires more than a party's own affidavit or mere assertions made within his brief

POST-CONVICTION RELIEF - PROCEDURAL BAR - FUNDAMENTAL RIGHTS EXCEPTIONS - Five fundamental rights exceptions have been expressly found to survive procedural bars: (1) the right against double jeopardy; (2) the right to be free from an illegal sentence; (3) the right to due process at sentencing; (4) the right not to be subject to ex post facto laws; and (5) under extraordinary circumstances, ineffective assistance of counsel

POST-CONVICTION RELIEF - PROCEDURAL BAR - INEFFECTIVE ASSISTANCE OF COUNSEL - To prevail on a claim for ineffective assistance of counsel, a defendant must prove (1) counsel's performance was deficient and (2) the deficient performance prejudiced the defense

FACTS

In 2011, Marcus Harris pled guilty to murder and aggravated assault. Seven years later, Harris filed a petition to clarify his sentence, which the trial court treated as a motion for post-conviction relief ("PCR"). Harris asserted, among other claims, that his guilty plea was the result of ineffective assistance of counsel. The trial court held that the PCR motion was without merit and time-barred pursuant to Miss. Code Ann. § 99-39-5(2) because Harris filed his motion more than three years after the entry of his judgment of conviction. Furthermore, the trial court found that Harris failed to show that his PCR claims involved one of the statutory exceptions to the time-bar or an error affecting a fundamental constitutional right. Accordingly, Harris's PCR motion was denied. Harris appealed.

ISSUE

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

HOLDING

Because Harris failed to present any extraordinary circumstances that would constitute an exception to the procedural bar, and because, notwithstanding a procedural bar, there was no merit to his PCR motion, the trial court properly denied Harris's PCR motion for being time-barred and successive-writ barred. Therefore, the Court of Appeals affirmed the judgment of the Jackson County Circuit Court.

Affirmed - 2019-CP-00804-COA (Aug. 11, 2020)

Opinion by Presiding Judge Carlton

Hon. Robert P. Krebs (Jackson County Circuit Court)
Pro se for Appellant - Barbara Wakeland Byrd (Att’y Gen. Office) for Appellee
Briefed by [Allison Payne](#)

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