

MISSISSIPPI SUPREME COURT DECISIONS – JANUARY 26, 2017

SUPREME COURT - CIVIL CASES

MISSISSIPPI DEPARTMENT OF CORRECTIONS V. ALLEN

CIVIL - STATE BOARD AND AGENCIES

ADMINISTRATIVE REVIEW PROCEDURE - APPEAL - FINAL DECISION - Pursuant to Miss. Code Ann. § 47-5-807, an inmate aggrieved by a decision of Mississippi Department of Corrections under administrative review procedure may appeal within thirty days after the inmate receives Mississippi Department of Corrections' final decision

PROBATION AND PAROLE LAW - CASE PLAN - AMENDMENT - Pursuant to Miss. Code Ann. § 47-7-3.1(1), effective July 1, 2014, the legislature amended the Probation and Parole Law to require Mississippi Department of Corrections to develop a case plan for "all parole eligible inmates"

PROBATION AND PAROLE LAW - CASE PLAN - AMENDMENT - An inmate sentenced before July 1, 2014, is not entitled to receive a case plan

FACTS

Charles Allen, a parole-eligible inmate in the custody of the Mississippi Department of Corrections (MDOC), filed a request pursuant to the administrative review procedure requesting that MDOC develop a case plan for him. MDOC denied Allen's request. After exhausting his administrative remedies, Allen appealed to the Circuit Court of Sunflower County. The circuit court found that Allen was entitled to receive a case plan under an amendment to the Probation and Parole Law. MDOC appealed.

ISSUE

Whether (1) the circuit court had jurisdiction over Allen's appeal and (2) Allen was entitled to a case plan under section 47-7-3.1 of the probation and parole law.

HOLDING

(1) Because the record did not disclose the date that Allen received the department's final decision, the Supreme Court did not consider whether the circuit court had jurisdiction. (2) Because Allen was sentenced before July 1, 2014, he was not entitled to a case plan. Therefore, the Supreme Court reversed the judgment of the Sunflower County Circuit Court and rendered a decision in favor of MDOC.

Reversed and Rendered - 2015-CA-01905-SCT (Jan. 26, 2017)

En Banc Opinion by Justice Kitchens

Hon. Margaret Carey-McCray (Sunflower County Circuit Court)

Anthony Louis Schmidt, Jr. & Darrell Clayton Baughn (Att'y Gen. Office) for Appellants - *Pro se* for Appellee

Briefed by [Victoria Jones](#)

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MISSISSIPPI DEPARTMENT OF CORRECTIONS V. BLAND

CIVIL - STATE BOARD & AGENCIES

ADMINISTRATIVE LAW- JUDICIAL REVIEW - ADVERSE DECISION - Mississippi Code Annotated § 47-5-807 provides that any offender who is aggrieved by an adverse decision rendered pursuant to any administrative review procedure under Sections 47-5-801 through 47-5-807 may, within thirty (30) days after receipt of the agency's final decision, seek judicial review of the decision

ADMINISTRATIVE LAW - PAROLE ELIGIBILITY - CASE PLAN - Mississippi Code Annotated §47-7-3.1 provides that MDOC shall develop a case plan for all parole eligible inmates to guide an inmate's rehabilitation while in MDOC's custody and to reduce the likelihood of recidivism after release

FACTS

In 1982, Bland pleaded guilty to capital murder, burglary, and forgery. He was sentenced to life imprisonment for the capital murder, ten years for the burglary, and fifteen years for the forgery. Bland was eligible for parole in 1998, but he was denied. He has since had seven more parole hearings. After House Bill 585 went into effect in 2014, Bland sought a parole case plan pursuant to Mississippi Code Annotated § 47-7-3.1. In 2015 Bland filed his "first step" with MDOC's Administrative Remedy Program (ARP). In response, MDOC said that House Bill 585 was not retroactive and applied only to offenders sentenced on or after July 2014; consequently, Bland was told he was not entitled to a parole case plan. After proceeding with the ARP's "second step," MDOC again informed Bland he was not entitled to a parole case plan. Bland filed a motion for judicial review, and the circuit judge reversed MDOC's decision, finding that Section 47-7-3.1 applied retroactively. MDOC appealed.

ISSUE

Whether the trial court erred in finding that Section 47-7-3.1 applied retroactively.

HOLDING

Because Section 47-7-3.1 does not clearly and unequivocally express an intention for retroactive applicability, the Supreme Court held that Section 47-7-3.1 does not apply to Bland. Therefore, the Supreme Court reversed and rendered the judgment of the Sunflower County Circuit Court.

Reversed and Rendered - 2015-CA-01908-SCT (Jan, 26, 2017)

En Banc Opinion by Justice Chamberlin

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

Anthony L. Schmidt, Jr. (Att'y Gen. Office) for Appellant - *Pro se* for Appellee

Briefed by [Lora Wuerdeman](#)

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MISSISSIPPI DEPARTMENT OF CORRECTIONS V. BOYD

CIVIL - STATE BOARDS AND AGENCIES

ADMINISTRATIVE LAW - STATUTORY CONSTRUCTION - AGENCY DEFERENCE - When determining the most reasonable and appropriate interpretation of a statute governing an administrative agency's operation, the agency's interpretation is an important factor that usually warrants strong consideration

LEGISLATION - RETROACTIVITY - LANGUAGE AND INTENT - A statute will not be construed to be retroactive unless words admit of no other construction or meaning, and there is a plain declaration in the act that it is retroactive

FACTS

In 1986, Robert Boyd was sentenced to life imprisonment for murder and to eight years for two counts of aggravated assault. Boyd was first released on parole in May 2001, and for a second time in September 2010; both were revoked in violation of the terms. In July 2015, Boyd asked MDOC to implement a parole case plan for him in accordance with

Mississippi Code § 47-7-3.1, effective July 1, 2014. MDOC responded that because § 47-7-3.1 was not retroactive, it applied only to those offenders sentenced on or after July 1, 2014. MDOC also informed Boyd that he was not entitled to a parole case plan. Boyd then filed a motion for judicial review in the Circuit Court of Sunflower County. Finding that § 47-7-3.1 applied retroactively to offenders sentenced before July 1, 2014, the circuit judge reversed MDOC's decision. Subsequent to that ruling, Boyd filed a motion asking the trial court to clarify its order of reversal with specific instructions requiring MDOC to issue a case plan to him. MDOC responded with a motion to stay enforcement of the trial court's order, and appealed to the Supreme Court. The circuit judge then denied Boyd's motion for clarification and granted MDOC's motion to stay. Boyd appealed.

ISSUES

Whether Boyd was eligible to receive a parole case plan or “presumptive parole” because he was convicted prior to July 1, 2014.

HOLDING

As both MDOC and the circuit judge recognized, the Court was recently presented with the exact same arguments in *Fisher v. Drankus*, a case also from the Sunflower County Circuit Court. The Court concluded that MDOC's interpretation of § 47-7-3.1 was reasonable and not inconsistent with the statute's language and the legislature's ascertainable intent. Additionally, the Court found that because § 47-7-3.1 does not clearly and unequivocally express intent for the statute to have a retroactive effect, it could not say that § 47-7-3.1 applies to those sentenced before July 2014. Therefore, the Supreme Court reversed and rendered the judgment of the Sunflower County Circuit Court.

Reversed & Rendered - 2015-CA-01904-SCT (Jan. 26, 2017)

En Banc Opinion by Justice Chamberlin

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

Anthony L. Schmidt Jr. & Darrell C. Baughn (Att'y Gen. Office) for Appellant – *Pro se* for Appellee

Briefed by [Amber Kipfmiller](#)

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THOMAS V. CHEVRON U.S.A., INC.

CIVIL - WORKERS' COMPENSATION

WORKERS' COMPENSATION - IMMUNITY - EMPLOYERS - Under Miss. Code Ann. § 71-3-9, the liability of an employer to pay compensation shall be exclusive and in place of all other liability of such employer to the employee and anyone otherwise entitled to recover damages from such employer on account of such injury or death, except that if an employer fails to secure payment of compensation as required by this chapter, an injured employee may elect to claim compensation under this chapter or to maintain an action at law for damages on account of such injury or death

WORKERS' COMPENSATION - IMMUNITY - OTHER PARTIES - Under Miss. Code Ann. § 71-3-71, the acceptance of compensation benefits from or the making of a claim for compensation against an employer or insurer for the injury or death of an employee shall not affect the right of the employee or his dependents to sue any other party at law for such injury or death, but the employer or his insurer shall be entitled to reasonable notice and opportunity to join in any such action or may intervene therein

WORKERS' COMPENSATION - LIABILITY - CONTRACTORS - Under Miss. Code Ann. § 71-3-7(6), a contractor shall be liable for workers' compensation benefits for a subcontractor's employees if the subcontractor has not provided for such benefits; when this statute is applicable, the contractor who secures the benefits becomes a statutory employer of the subcontractor's employees and may receive immunity from tort liability; a “chief or prime contractor” is defined as one who has a contract with the owner of a project or job, and has full responsibility for its completion

FACTS

Quindon Thomas worked for Bragg Investment Co., d/b/a American Plant Services, Inc. (“APS”), a contractor of Chevron, at Chevron’s petroleum refinery in Pascagoula as a maintenance worker. Dwayne Haisch, a Chevron employee, opened a valve that expelled hot steam, coke, and water onto Thomas, burning most of Thomas’s body. As part of Chevron’s contract with APS, Chevron was required to provide workers’ compensation insurance for all APS employees working at the refinery through Chevron’s Owner Controlled Insurance Program (“OCIP”). Thomas immediately began receiving workers’ compensation benefits after the accident, receiving \$350,000 from Chevron, fully exhausting the policy’s self-insured retention. Following that, Indemnity Insurance began paying wages and benefits pursuant to the workers’ compensation coverage under the OCIP. Thomas received an additional \$628,734 from Indemnity Insurance. Thomas and his wife sued Chevron and Haisch, for the injuries he sustained, asserting negligence and premises liability claims. Chevron raised the affirmative defense of immunity from tort liability under the Mississippi Workers’ Compensation Act. Following the motion to intervene, Chevron and Haisch moved for summary judgment. Thomas filed a cross-motion for summary judgment seeking a ruling that Chevron was not entitled to immunity because Chevron was not his statutory employer. The Jackson County Circuit Court granted Chevron’s motion for summary judgment, dismissing with prejudice all claims against Chevron and dismissing Thomas’s cross-motion. Thomas appealed.

ISSUES

Whether the trial court erred in (1) granting Chevron’s motion for summary judgment and (2) denying Thomas’s cross-motion for partial summary judgment.

HOLDING

Because Chevron was the owner of the plant and not a “chief” or “prime” contractor, Chevron had no duty as an employer to secure workers’ compensation insurance under the statute, and its act of voluntarily purchasing coverage did not change its status. Thus, Chevron was not immune from a negligence action and was subject to Thomas’s tort claim as “any other party” pursuant to Miss. Code Ann. § 71-3-71. Because the Court reversed the trial court’s grant of Chevron’s motion for summary judgment, it also reversed the trial court’s denial of Thomas’s cross-motion for summary judgment. Therefore, the Supreme Court reversed the judgment of the Jackson County Circuit Court and remanded the case for further proceedings.

Reversed and Remanded - 2016-CA-00101-SCT (Jan. 26, 2017)

En Banc Opinion by Chief Justice Waller

Hon. Robert P. Krebs (Jackson County Circuit Court)

James R. Reeves Jr. & Matthew G. Mestayer for Appellants - Michael James Bentley & Patrick R. Buchanan for Appellees

Briefed by [Mallory Bland](#)

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SUPREME COURT - CRIMINAL CASES

LINDSEY V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - SUFFICIENCY OF THE EVIDENCE - TESTIMONY OF VICTIM - The unsupported word of the victim of a sex crime is sufficient to support a guilty verdict where that testimony is not discredited or contradicted by other credible evidence

CRIMINAL PROCEDURE - WEIGHT OF EVIDENCE - WITNESS CREDIBILITY - The jury is charged with the responsibility of weighing and considering the conflicting evidence and credibility of the witnesses and determining whose testimony should be believed

FACTS

Howard Lindsey was indicted for two counts of gratification of lust and two counts of sexual battery against two minors, M.L. and T.P. At trial, M.L. and T.P. were the State's only witnesses. The jury returned a verdict finding Lindsey guilty on all counts. The trial court denied his post-trial motions. Lindsey appealed.

ISSUE

Whether the jury's verdict was against the overwhelming weight of the evidence.

HOLDING

Because there was no evidence in the record to contradict the testimony of M.L. and T.P. which established each element of the charged offenses, the jury's verdict was not against the overwhelming weight of the evidence. Therefore, the Supreme Court affirmed the judgment of the Covington County Circuit Court.

Affirmed - 2015-KA-01417-SCT (Jan. 26, 2017)

Opinion by Chief Justice Waller

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

Merrida Coxwell for Appellant - Scott Stuart (Att'y Gen. Office) for Appellee

Briefed by [Catherine Norton](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – JANUARY 24, 2017

COURT OF APPEALS - CIVIL CASES

BEDFORD CARE CTR. OF MARION, LLC v. NICHOLSON

CIVIL - STATE BOARDS AND AGENCIES

BOARDS AND AGENCIES - UNEMPLOYMENT BENEFITS - EMPLOYEE MISCONDUCT - EMPLOYER BURDEN OF PROOF - In misconduct cases, the employer bears the burden to prove by substantial, clear, and convincing evidence that a former employee's conduct warrants disqualification of benefits

BOARDS AND AGENCIES - UNEMPLOYMENT BENEFITS - DISQUALIFYING MISCONDUCT - Disqualifying misconduct is defined as conduct evincing such willful and wanton disregard of the employer's interest as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect from his employee

BOARDS AND AGENCIES - UNEMPLOYMENT BENEFITS - FALSIFICATION - Falsification of an employment application can be grounds for disqualification of benefits, but it must rise to the level of willful and wanton so as to invoke disqualification for unemployment-insurance benefits

BOARDS AND AGENCIES - UNEMPLOYMENT BENEFITS - COMPANY POLICY VIOLATIONS - Violation of company policy can warrant employment termination without, at the same time, constituting "misconduct" for purposes of disqualifying the employee from benefits

FACTS

Cenither Nicholson was terminated from Bedford Care Center for falsifying information on her employment application. An administrative-law judge determined that she was disqualified from receiving benefits because her responses to the questionnaire indicated a willful or intentional falsification of information. This decision was affirmed by the Board and subsequently appealed to the trial court. The trial court reversed the Board's decision, and found that Nicholson neither understood the questions being asked, nor did she intentionally provide false information during the hiring process. Bedford Care Center appealed.

ISSUE

Whether there was substantial evidence presented to support that Nicholson acted in such willful and wanton disregard of her employer's interest that disqualification of unemployment benefits was warranted.

HOLDING

Nicholson's inaccurate answers did not rise to the level of willful or wonton disregard of her employer's interest. Further, even if the responses on her application warranted her dismissal as a violation of company policy, they did not warrant disqualification of unemployment-insurance benefits. Therefore, the Court of Appeals affirmed the judgment of the Lauderdale County Circuit Court.

Affirmed - 2014-CA-00804-COA (Jan. 24, 2017)

Opinion by Judge Greenlee

Hon. Lester F. Williamson Jr. (Lauderdale County Circuit Court)

Robin L. Roberts for Appellant - *Pro se* for Appellee

Briefed by [Kaylee Beauchamp](#)

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CASSIBRY V. CASSIBRY

CIVIL - WILLS, TRUSTS, AND ESTATES

WILLS, TRUSTS, AND ESTATES - CHANCERY COURT - FACTUAL FINDINGS - Factual findings made by the chancery court will not be disturbed if they are supported by substantial evidence unless the court can say with reasonable certainty that the chancellor abused his discretion, was manifestly wrong, clearly erroneous, or applied an erroneous legal standard

WILLS, TRUSTS, AND ESTATES - TRUSTEE - DUTY OF LOYALTY - Pursuant to Miss. Code Ann. § 91-9-609 (Supp. 2014), a trustee shall invest and manage the trust assets solely in the interest of the beneficiaries

CHANCERY COURTS - CHANCELLOR FACTUAL DETERMINATION - NO SPECIFIC FINDING OF FACT - If a chancellor makes no specific finding, and none are required by a "factor test" mandated by case law, appellate courts generally presume the chancellor resolved fact issues in favor of the prevailing parties

FACTS

Napoleon Cassibry Jr., died in 1998 and left an estate valued at \$1,225,064. His son, Napoleon Jr., was appointed Trustee for the estate. June Cassibry, Napoleon Jr.'s surviving wife, later established additional trusts and named Napoleon Trustee for those as well. Napoleon Jr. took out several "loans" from the trusts, and maintained poor recordkeeping, making it unclear if he ever paid the "loans" back. Napoleon Jr.'s brother, Graham, filed a complaint against Napoleon Jr., alleging he had breached his fiduciary duty in relation to all the trusts. The chancery court made several findings of fact concerning accounting figures, ultimately determining that Napoleon Jr. breached his fiduciary duty. The chancery court ordered Napoleon Jr. to pay \$144,865.86 in monetary damages, pay \$17,902 for accounting costs, transfer 7,757 shares of Paragon National Bank stock to Graham, and awarded Graham \$28,500 in attorney's fees. Napoleon appealed.

ISSUES

Whether (1) the chancellor erred in finding Napoleon's withdrawals or "loans" from a trust constituted a breach of the duty of loyalty; (2) the chancellor erred in awarding damages for Napoleon's withdrawals or "loans" from a trust; and (3) whether the chancellor's award of attorney's fees was supported by the evidence.

HOLDING

(1) Because a trustee must invest and manage the trust assets solely in the interest of the beneficiaries, and the "loans" taken out by Napoleon hurt the other beneficiaries of the trust, the chancellor did not err in finding a breach of the duty of loyalty. (2) Although the chancery court did not make a specific finding of fact with regards to June's express

authorization of Napoleon's withdrawals, the court assumed the chancellor resolved the issue in favor the prevailing party. Therefore, Graham was entitled to monetary damages. (3) Because the attorney's fee itemization was not properly admitted into the chancery court's record, the court reversed the award and remanded for a hearing on the proper amount for attorney's fees. Therefore, the Court of Appeals affirmed in part, and reversed and remanded in part the judgment of the Bolivar County Chancery Court.

Affirmed In Part, Reversed and Remanded In Part - 2013-CA-01468-COA (Jan. 24, 2017)

Opinion by Judge Barnes

Hon. Catherine Farris-Carter (Bolivar County Chancery Court, Second Judicial District)

Jeffrey A. Levingston, and Kaytie Michelle Pickett for Appellants - Steven Todd Jeffreys for Appellee

Briefed by [Josh Rhodes](#)

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DAVIS V. DAVIS

CIVIL - CUSTODY

CHILD CUSTODY - MODIFICATION - BURDEN OF PROOF - To modify child custody, the non-custodial party must prove that a substantial change in circumstances has transpired since issuance of the custody decree; that this change adversely affects the child's welfare; that the child's best interest mandates a change of custody; and the chancellor must consider the totality of the circumstances

CHILD SUPPORT - MODIFICATION - DETERMINATION - A chancellor may modify child support if there has been a substantial or material change in the circumstances of one or more of the interested parties: the father, the mother, and the child or children arising subsequent to the entry of the decree to be modified

COURT APPOINTMENTS - GUARDIAN AD LITEM - RECOMMENDATIONS - A chancellor is not required to follow the findings of a GAL, but when a chancellor's ruling is contrary to the recommendation of a statutorily required GAL, the reasons for not adopting the GAL's recommendation shall be stated by the Court in the findings of fact and conclusions of law

POWER OF ATTORNEY - NON-BIOLOGICAL PARENTS - SCHOOL RECORDS - A power of attorney may be executed to allow a non-biological parent to have access to school records if the biological parent is absent

FACTS

Gary and Angela Davis had two children prior to their divorce, Kristin and Nicole. The divorce decree provided that Angela would be the custodial parent, while Gary would be the non-custodial parent. In October 2013, Angela filed a petition in the Covington County Chancery Court to terminate Gary's custody, or in the alternative, modify the rights and increase the amount of child support. Angela alleged Gary had not exercised his visitation rights with Kristin since 2011, and with Nicole since 2012. She further alleged Gary's income had increased since the divorce. In February 2014, the Chancellor appointed a guardian ad litem (GAL), which recommended Gary's rights not be terminated, but Angela should have primary custody of the children with Gary having visitation rights. After the hearing, the Chancellor denied Angela's requests to (1) terminate Gary's parental rights, (2) modify custody/visitation, and (3) increase the amount of child support. The Chancellor did order Gary to pay for their children's private school tuition and ordered that Gary could execute a power of attorney allowing Gary's second wife, Teresa, to have access to the children's school records while he was working out of town. Angela appealed.

ISSUES

Whether the Chancellor erred by failing to (1) modify Gary's custody/visitation, (2) increase child support payments, (3) follow the GAL's recommendation, and by allowing (4) Teresa to have access to the children's school records.

HOLDING

(1) Because the evidence showed there had not been a material change in circumstances which would adversely affect the situations in the custodial home of either parent, there was no error in failing to modify custody/visitation. (2) The

Chancellor did not abuse his discretion in not modifying the child support payments due to the Court's order requiring Gary to pay for the private school tuition. (3) Because the Chancellor followed the GAL's recommendation of not terminating Gary's parental rights and because the GAL was not appointed to investigate the modification of custody issue, the Chancellor did not err in failing to adopt the second part of the GAL's recommendations. (4) Finally, the Chancellor did not err in allowing Teresa to have a power of attorney to the school access records because it would allow her to have access to important information should Gary be working out of town. Therefore, the Court of Appeals affirmed the judgment of the Covington County Chancery Court.

Affirmed - 2014-CA-01738-COA (Jan. 24, 2017)

Opinion by Chief Judge Lee

Hon. William R. Barnett (Covington County Chancery Court)

Audry Regnal Blackledge for Appellant - W. Terrell Stubbs for Appellee

Briefed by [Patrick Huston](#)

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DAVIS V. DAVIS

CIVIL - DOMESTIC RELATIONS

DOMESTIC RELATIONS - CHILD SUPPORT - MODIFICATION - The burden of proof that must be met by the party seeking a financial modification is to show a material change of circumstances of one or more of the interested parties, whether it be the father, mother, or the children; the change must occur as a result of after-arising circumstances of the parties not reasonably anticipated at the time of the agreement

CHILD SUPPORT - CUSTODY - SEPARATE CHILDREN - When parents are given custody of separate children, a chancellor may require the parent with the higher income to pay only the difference in the child support that each custodial parent owes to the other

CIVIL PROCEDURE - CONTEMPT - JUDICIAL DISCRETION - Contempt matters are committed to the substantial discretion of the chancellor

FACTS

Greg and Suzann Davis are divorced. The most recent modification of their child support and custody agreement required Greg to pay monthly child support for their three children. Two children lived with Suzann, while one (the middle child) lived with Greg. Suzann filed for further modification to physical custody and contempt for missed payments. Greg answered and sought modification for child support of the oldest child, who planned to seek emancipation. The chancellor denied relief to Suzann, reduced Greg's child support obligation to offset the maintenance of the child in his custody, and provided that child support would be further modified upon the emancipation of the oldest child. Suzann appealed.

ISSUES

Whether the chancellor erred in (1) reducing Greg's child support; and (2) denying Suzann relief for contempt and attorney's fees.

HOLDING

(1) Because Greg's criminal convictions were a material change of circumstances and the modification offset the difference in child support owed for separate children, the chancellor did not err in reducing Greg's child support. (2) The chancellor did not abuse her discretion in denying Suzann relief for contempt. Therefore, the Court of Appeals affirmed the judgment of the DeSoto County Chancery Court..

Affirmed - 2015-CA-01810-COA (Jan. 24, 2017)

Opinion by Judge Fair
Hon. Vicki B. Daniels (DeSoto County Chancery Court)
Jerry Wesley Hisaw & M.W. Zummach for Appellant - A.E. (Rusty) Harlow Jr., Dalaney Lee Mecham, & Kathi Crestman Wilson
for Appellee
Briefed by [Brittany Bane](#)

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COURT OF APPEALS – POST-CONVICTION RELIEF

BARKER V. STATE

CIVIL - POST-CONVICTION RELIEF

CRIMINAL PROCEDURE - GUILTY PLEA - VOLUNTARY PLEA - For a guilty plea to be valid it must be entered into voluntarily, knowingly and intelligently; that is the trial court must advise the defendant of his rights, the nature of the charge against him, as well as the consequences of the plea

POST-CONVICTION RELIEF - INEFFECTIVE ASSISTANCE OF COUNSEL - *STRICKLAND* - To prove ineffective assistance of counsel, the defendant must show: (1) counsel's performance was deficient and (2) this deficiency prejudiced the defense

FACTS

Terrance Baker was indicted for one count of sale of hydrocodone and one count of sale of marijuana as a second offender. Baker pleaded guilty to the sale of hydrocodone as a second offender. Baker filed a PCR motion claiming his plea was involuntary and he was denied effective assistance of counsel. The trial court found Baker's arguments without merit and dismissed his PCR motion. Baker Appealed.

ISSUES

Whether the trial court erred by (1) finding Baker's plea was voluntary and knowing and (2) finding Baker's counsel adequately investigated the case.

HOLDING

(1) Because Baker was thoroughly informed of the nature and consequences of his guilty plea, the trial court did not err in accepting the plea. (2) Because Baker provided no affidavits or other evidence to support his allegations, the issue was without merit. Therefore, the Court of Appeals affirmed the decision of the Desoto County Circuit Court.

Affirmed - 2015-CA-01638-COA (Jan. 24, 2017)

Opinion by Judge Barnes
Hon. Robert P. Chamberlin (Desoto County Circuit Court)
Michael Haden Lawyer for Appellant - Billy L. Gore (Att'y Gen. Office) for Appellee
Briefed by [Pete Doran](#)

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WILLIAMS V. STATE

CIVIL -POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - DISMISSAL - SUBSEQUENT MOTION - Under the Uniform Post-Conviction Collateral Relief Act (UPCCRA), "any order dismissing the petitioner's motion or otherwise denying relief

under this article is a final judgment and shall be conclusive until reversed. It shall be a bar to a second or successive motion under this article”

POST-CONVICTION RELIEF - DISMISSAL - EXCEPTION FOR SUBSEQUENT MOTION - A successive writ may be permitted if the petitioner can show that a statutory exception applies

POST-CONVICTION RELIEF - STATUTE OF LIMITATIONS - SUBSEQUENT MOTION - A motion for post-conviction relief must be filed within three years following the entry of judgment of conviction, and failure to file within the three-year period procedurally bars appeal of the dismissal of the motion

POST-CONVICTION RELIEF - STATUTE OF LIMITATIONS - WAIVER - The statute of limitations may be waived when a fundamental constitutional right is implicated

FACTS

A Sunflower County grand jury indicted Brian Williams for numerous offenses arising from the commission of a robbery. Williams pled guilty to one count of armed robbery and one count of aggravated assault. Williams’s first post-conviction relief (PCR) motion alleging a speedy-trial violation was denied by the trial court and affirmed by the Court of Appeals. His second PCR motion challenged the voluntariness of his guilty plea and alleged ineffective assistance of counsel. Finding no merit to his claims and finding his PCR motion was procedurally barred as a successive writ, the Court of Appeals again affirmed the trial court’s dismissal of Williams’s PCR motion. His third PCR motion claimed that the indictment was defective for failure to allege the essential elements of armed robbery and aggravated assault; he also claimed ineffective assistance of counsel for his attorney failing to challenge the defects. Finding no merit to his claims and finding the motion procedurally barred as a successive writ, the Court of Appeals again affirmed the trial court’s dismissal of his motion. Williams filed a fourth PCR motion. The trial court dismissed the motion as both time-barred and successive-writ barred. Williams appealed.

ISSUES

Whether the trial court erred by dismissing the PCR motion as both time-barred and successive-writ barred.

HOLDING

Williams’s argument is procedurally barred because (1) he failed to show his indictment was defective, (2) he failed to provide any new evidence or merit that would demand the trial court review the evidence supporting this fourth PCR motion, (3) he failed to show the trial court both violated his Sixth Amendment right to due process and neglected to tell him of his right to cross-examine adverse witnesses, and (4) he failed to provide anything to demonstrate he received ineffective assistance of counsel other than his own assertions. Therefore, the Court of Appeals affirmed the judgment of the Sunflower County Circuit Court.

Affirmed -2015-CP-01911-COA (Jan. 24, 2017)

Opinion by Chief Judge Lee

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

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

Briefed by [Brittany Barbee](#)

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COURT OF APPEALS - CRIMINAL CASES

ADAMS V. STATE

CRIMINAL - FELONY

APPELLATE PROCEDURE - PROCEDURAL BAR - NECESSITY OF PRESENTATION - Generally, a party is procedurally barred from asserting an issue on appeal if the claim was not originally raised in the trial court

APPELLATE PROCEDURE - SUFFICIENCY OF EVIDENCE - STANDARD - In determining whether a conviction is supported by sufficient evidence, Mississippi appellate courts assess whether the evidence presented would allow a jury to find 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

APPELLATE PROCEDURE - GROUNDS FOR NEW TRIAL - WEIGHT OF THE EVIDENCE - A new trial based on the weight of the evidence should be granted only in exceptional cases, in which the evidence preponderates heavily against the verdict

FACTS

Andrew Acie Adams was spotted driving in Gulfport, Mississippi, while there was a warrant out for his arrest. After pulling Adams over, police officers noticed a loaded magazine in the driver's side door. Adams's wife, who was in the passenger seat, was found to have been sitting on a pistol, and a search of the vehicle's trunk revealed a .22-caliber rifle. Adams confessed to owning the rifle, but he claimed to know nothing of the pistol. Adams was tried in the Harrison County Circuit Court on two counts of possession of a weapon by a convicted felon. After the State presented its case, the trial court directed a verdict of acquittal for possession of the pistol. Adams testified in his own defense that he had lied about his owning the rifle in order to protect his wife, explaining that he feared she may be arrested for possessing a stolen firearm. The jury convicted Adams of possession of the rifle under a constructive possession theory, and the trial court subsequently entered a judgment in accordance with the verdict. Adams appealed.

ISSUE

Whether the trial court erred in (1) not suppressing Adams's confession as involuntary, (2) finding that the evidence was sufficient to support the conviction, (3) determining that the verdict was not against the overwhelming weight of the evidence, and (4) declining to give Adams's proposed jury instruction on the elements of constructive possession.

HOLDING

(1) Because Adams did not challenge the voluntariness of his confession in the trial court or present evidence to support such an argument, the claim was procedurally barred on appeal and, moreover, lacked evidentiary support in the record. (2) Because Adams was proximately close to the weapon and a matching loaded magazine, and because he was operating the vehicle in which the weapon was found, there was sufficient evidence to sustain the conviction on a constructive possession theory. (3) Because the evidence that Adams possessed the rifle was adequate to support the jury's finding of guilt, and the verdict was thus not against the overwhelming weight of the evidence. (4) Because the jury instruction given by the trial court for constructive possession was identical to one approved by the Mississippi Supreme Court, Adams's objection to the instruction was without merit. Therefore, the Court of Appeals affirmed the decision of the Harrison County Circuit Court.

Affirmed - 2015-KA-01703-COA (Jan. 24, 2017)

Opinion by Presiding Judge Fair

Hon. Lawrence Paul Bourgeois Jr. (Harrison County Circuit Court)

Phillip Broadhead (Pub. Def. Office) for Appellant – Abbie Eason Koonce (Att'y Gen. Office) for Appellee

Briefed by [James Kelly](#)

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HUMBLES V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - MULTI-COUNT INDICTMENT - PERMISSIBILITY - Miss. Code Ann. § 99-7-2 states that two or more offenses which are triable in the same court may be charged in the same indictment with a separate count for each offense if: (a) the offenses are based on the same act or transaction; or (b) the offenses are based on two or more acts or transactions connected together or constituting parts of a common scheme or plan

MULTI-COUNT INDICTMENT - MOTION TO SEVER - CORLEY FACTORS - When a defendant seeks to sever counts in an indictment, the State must make a prima facie case showing that the offenses fall within the confines of the statute; the defendant can rebut such a showing by demonstrating the weight of the *Corley* factors: (1) whether the time period between occurrences is insignificant; (2) whether the evidence proving each count would be admissible to prove each of the other counts; and (3) whether the crimes are interwoven

CRIMINAL PROCEDURE - STATUTORY RIGHT TO SPEEDY TRIAL - ATTACHMENT - Under Miss. Code Ann. § 99-17-1, the statutory speedy trial attaches at arraignment, and criminal defendants have a right to be tried no later than 270 days after arraignment

SPEEDY TRIAL VIOLATION - HAVARD STANDARD - WAIVER - If the defendant did not first raise a speedy trial claim at the trial court, the appellate court can only decide the issue if plain-error justifies appellate review

INDICTMENT - SUFFICIENT NOTICE - DATE OF OFFENSE - An allegation of the date of the offense is not an essential element of the offense charged in the indictment

FACTS

Sidney Humbles assaulted and robbed Mina Paul at Fairway Grocery, a convenience store she owned in Jackson, MS. She knew him as the “donut man,” who sold donuts outside her store. Two days later, Humbles robbed the home of Paul and Melvern Mickell, taking the gun Paul used to defend his home upon his wife’s scream. They also testified they had been robbed by the “donut man.” Paul told police he may have shot Humbles in the encounter, and police later picked up Humbles at University Medical Center suffering from a gunshot wound. He admitted in separate statements to having committed both robberies, and his parole was revoked. At trial, he was convicted on four counts and sentenced to three life sentences as a habitual offender. Humbles appealed.

ISSUES

Whether the trial court erred in (1) denying appellant’s motion to sever Count IV from Counts I-III; and (2) declining to dismiss the indictment on speedy trial grounds; and (3) declining to find Counts II and III fatally defective.

HOLDING

(1) Because the trial court properly undertook a *Corley* analysis, the trial court did not abuse its discretion in denying Humbles’ motion to sever. (2) Because Humbles failed to show plain error on appeal, his constitutional speedy trial violation claim was procedurally barred. (3) Because Humbles earlier argued to sever Count IV from Counts I-III, largely because the two incidents occurred on separate dates, it was clear that Humbles received sufficient notice of the charges against him, and no injustice or misapplied law was in need of correction. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Circuit Court.

Affirmed - 2015-KA-01832-COA (Jan. 24, 2017)

Opinion by Chief Judge Lee

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

George T. Holmes (Pub. Def. Office) for Appellant - Barbara Wakeland Byrd (Att’y Gen. Office) for Appellee

Briefed by [Meredith Pohl](#)

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WOODS V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - CONFESSIONS - ADMISSIBILITY - In order for a confession to be admissible, it must have been intelligently, knowingly, and voluntarily given, and not a product of police threats, promises, or inducements

CRIMINAL PROCEDURE - CONFESSIONS - ADMISSIBILITY – The prosecution bears the burden of showing beyond a reasonable doubt that the confession was voluntary

FACTS

Karen Woods was convicted of burglary of a dwelling. Before Woods's trial, she was questioned by Neshoba County's Sheriff Department, to whom she confessed to committing the crime. The investigator that questioned Woods testified at trial that he advised Woods of her constitutional rights and that she voluntarily chose to sign a form to waive her rights. He further testified that Woods did not appear to be under the influence of drugs or alcohol at the time of the interview. Woods was sentenced to fifteen years in the custody of the Mississippi Department of Correction and ordered to pay a \$2,000 fine. Woods appeals.

ISSUES

Whether the trial court erred by (1) admitting into evidence Woods's pretrial confession and (2) overruling the defense's objection to part of the investigator's testimony.

HOLDING

(1) Because the State met its burden of proving that Woods's voluntarily gave her confession, the trial court did not abuse its discretion by admitting Woods's confession into evidence. (2) Because the investigator only testified to subject matters about which he possessed personal knowledge, the trial court did not abuse its discretion by refusing to strike the investigator's trial statement from the record. Therefore, the appellant's conviction was affirmed.

Affirmed - 2015-KA-01216-COA (Jan. 24, 2017)

En Banc Opinion by Judge Carlton

Hon. Marcus D. Gordon (Neshoba County Circuit Court)

Edmund J. Phillips Jr. for Appellant - Laura Hogan Tedder (Att'y Gen. Office) for Appellee

Briefed by [TreMarcus Rosemon](#)

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