

MISSISSIPPI SUPREME COURT DECISIONS – MARCH 16, 2017

SUPREME COURT - CIVIL CASES

WAYNE COUNTY SCH. DIST. V. MORGAN

CIVIL - STATE BOARDS AND AGENCIES

ENERGY & UTILITIES LAW - OIL, GAS, & MINERAL INTERESTS - TAXATION - School districts are not liable for oil and gas severance taxes on sixteenth-section royalty interests

GOVERNMENTS - LEGISLATION - INTERPRETATION - When considering a statute passed by the Legislature, the first question a court should decide is whether the statute is ambiguous; if it is not ambiguous, the court should apply the statute according to its plain meaning

GOVERNMENTS - TAXATION & FINANCE - REFUNDS - Pursuant to Miss. Code Ann. § 27-65-53, if any overpayment of tax is not refunded or credited to a taxpayer's account within ninety (90) days after the application is filed or the date the commissioner determines a refund is due, whichever is later, interest at the rate of one percent (1%) per month shall be allowed on such an overpayment

FACTS

In 2008, Wayne County School District (WCSD) filed a claim for refund of severance taxes paid to the Mississippi Department of Revenue (MDOR) on oil and gas production from sixteenth-section lands located within the county. While WCSD's refund claim was pending, Jones County School District (JCSD) also filed suit against MDOR, after MDOR denied the same tax refund request to JCSD. On March 7, 2013, the Mississippi Supreme Court issued its opinion in *Jones County School District v. Mississippi Department of Revenue*, finding that the tax was unlawful. That same day, the Commissioner of the MDOR, J. Ed Morgan, determined WCSD should be issued a refund based on the Court's opinion. WCSD filed its complaint for declaratory judgment seeking interest on its refund claim at the rate of 1%, beginning 90 days after it filed its refund claim. The trial court held that interest should begin to run 90 days from the date the Mississippi Supreme Court determined that the tax was unlawful, not the date the refund claim was filed. The trial court ordered MDOR to calculate interest owed to WCSD starting on June 5, 2013. WCSD appealed.

ISSUE

Whether the trial court erred in determining that the start date for the 90-day time period for payment of the tax refund began the day the Supreme Court issued its opinion in *Jones County*.

HOLDING

Because the 90-day time period for payment of the refund commenced on the date the Mississippi Supreme Court held that the tax was unlawful, which coincided with the date the Commissioner determined Wayne County should receive its refund, the trial court did not err in determining the correct start date for the 90-day refund period. Therefore, the Supreme Court affirmed the judgment of the Wayne County Chancery Court.

Affirmed - 2015-SA-01363-SCT (Mar. 16, 2017)

Opinion by Presiding Justice Randolph

Hon. Franklin C. McKenzie Jr. (Wayne County Chancery Court)

C. Ted Sanderson Jr., Leslie Bounds, & Charles Weil Goldberg Jr. for Appellant - James L. Powell & Sylvie D. Robinson for Appellee

Briefed by [Kaitlyn McMellon](#)

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SUPREME COURT - POST-CONVICTION RELIEF

JACKSON V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - FILING OF MOTION - JURISDICTION - Pursuant to Miss. Code Ann. § 99-39-7, where defendant's conviction and sentence has been affirmed on appeal or the appeal has been dismissed, the motion shall not be filed in the trial court until the motion is first presented to a quorum of the Justices of the Supreme Court of Mississippi, and an order granting the filing of such motion in the trial court is issued

APPELLATE PROCEDURE - POST-CONVICTION RELIEF - FILINGS - A prisoner who has filed a proper motion pursuant to the Uniform Post-Conviction Collateral Relief Act (UPCCA), which has survived summary dismissal under § 99-39-11(2) of the Miss. Code, may be entitled to trial transcripts or other relevant documents under the discovery provisions of § 99-39-15, upon good cause shown

APPELLATE PROCEDURE - POST-CONVICTION RELIEF - FILINGS - While a prisoner may appeal the denial of a motion for PCR, nothing in the UPCCA or elsewhere gives a prisoner the right to institute an independent, original action for a free transcript or other documents and then if dissatisfied with the trial court's ruling, to directly appeal that ruling to this court as a separate and independent action

FACTS

David Jackson was convicted for possession of cocaine with intent to distribute. Jackson filed a motion for records and transcripts in the trial court. The trial court denied the motion on the basis that Jackson was not entitled to discovery. Jackson appealed the order, and the Court of Appeals dismissed for lack of jurisdiction. Jackson petitioned for writ of certiorari.

ISSUE

Whether Jackson was entitled to a free copy of the records and transcripts. the trial court had jurisdiction to render judgment on Jackson's motion for records and transcripts.

HOLDING

Because Jackson failed to seek leave of the Supreme Court before filing a motion for post-conviction relief, the trial court was without jurisdiction to entertain Jackson's motion. The Supreme Court found that the correct result was reached, but the trial court should have dismissed the motion rather than denying it on the merits. Therefore, the Supreme Court modified the Court of Appeals' disposition and affirmed the judgment of the Madison County Circuit Court.

Affirmed - 2015-CT-00521-SCT (Mar. 16, 2017)

En Banc Opinion by Chief Justice Waller

Hon. John Huey Emfinger (Madison County Circuit Court)

Pro se for Appellant - Jeffrey A. Klingfuss (Att'y Gen. Office) for Appellee

Briefed by [Zachary Roberson](#)

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SUPREME COURT - CRIMINAL CASES

SHELTON V. STATE

CRIMINAL - FELONY

CRIMINAL - JURY INSTRUCTIONS - TWO-THEORY INSTRUCTION - In a case based entirely on circumstantial evidence, a two-theory instruction exists if the jury is instructed that the evidence must exclude every reasonable theory other than that of guilt, and refusal of the two-theory instruction is not reversible error

CRIMINAL - TWO-THEORY INSTRUCTION - REFUSAL - The trial court may refuse a two-theory instruction—even where all of the evidence is circumstantial—if it has given a circumstantial evidence instruction

FACTS

Ketina Tutton—Tameshia Shelton’s younger sister—was dating Daniel Young. Tutton and Young often stayed at Shelton’s residence. One night after Tutton and Young argued about their future relationship plans, Young was found with a gunshot wound in the chest. A .22 caliber pistol that belonged to Shelton was found next to his body. Shelton was arrested. At trial, experts for the State testified that gunshot residue on Shelton’s hands and clothing and the trajectory of the bullet through Young’s body ruled out the possibility that the wound was self-inflicted. Testimony was also presented that Young had no prior history of suicidal behavior and that Shelton was consistently wiping her hands prior to being tested for gunshot residue. Though much of the evidence was circumstantial, the Clay County Circuit Court convicted Shelton for the murder of Daniel Young. Shelton appealed.

ISSUES

Whether (1) the evidence was sufficient to show that all the elements of the crime were present; (2) the verdict was against the weight of the evidence; and (3) the trial court erred by denying the requested two-theory jury instruction.

HOLDING

(1) Because there was evidence, though circumstantial, supporting each element of the crime, a rational trier of fact could have found that all the elements of the crime were present. (2) Because the forensic evidence presented at trial demonstrated that Shelton had shot Young, the verdict was not against the weight of the evidence. (3) Because the jury instructions given at trial included instructions concerning circumstantial evidence, the trial court did not err in denying the requested two-theory instruction. Therefore, the Supreme Court affirmed the judgment of the Clay County Circuit Court.

Affirmed - 2015-KA-01274-SCT (Mar. 16, 2017)

Opinion by Justice Chamberlin

Hon. James T. Kitchens Jr. (Clay County Circuit Court)

Rodney A. Ray for Appellant - Laura H. Tedder (Att’y Gen. Office) for Appellee

Briefed by [Joseph Rychlak](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – MARCH 14, 2017

COURT OF APPEALS - CIVIL CASES

BROOKS V. LANDMARK NURSING CTR., INC.

CIVIL - WRONGFUL DEATH

PRETRIAL PROCEDURE - REQUESTS FOR ADMISSION - SUBJECT MATTER - A defendant in a medical malpractice case can request an admission that the patient's treatment complied with the applicable standard of care, and that a plaintiff's failure to respond to the request will result in a dispositive admission and a basis for granting summary judgment

DISCOVERY - REQUESTS FOR ADMISSION - Requests for admissions are deemed admitted unless, within thirty days of service, the recipient serves an answer or objection to the request

DISCOVERY - REQUESTS FOR ADMISSION - WITHDRAWAL - Any matter admitted under Miss. R. Civ. P. 36 is conclusively established unless the court on motion permits withdrawal or amendment of the admission

FACTS

Gertrude Brooks filed a wrongful death suit against Landmark Nursing Center, alleging that her late husband died due to negligent care and understaffing at the facility. Landmark answered the complaint and served discovery requests on Brooks, including requests for admissions. Brooks failed to answer or otherwise respond, so Landmark's requests were deemed to be "admitted." Landmark filed a motion for summary judgment based on the deemed admissions, and Brooks filed a motion to withdraw her admissions. The trial court denied the motion to withdraw and granted summary judgment in favor of Landmark. Brooks appealed.

ISSUES

Whether the trial court erred in (1) granting summary judgment for Landmark and (2) denying Brooks's motion to withdraw her admissions pursuant to Miss. R. Civ. P. 36(b).

HOLDING

(1) Because Brooks failed to respond to requests for admissions, Landmark was entitled to judgment as a matter of law. (2) Because the trial court declined to excuse Brooks's "blatant carelessness and neglect" in failing to respond to the requests, it did not abuse its discretion by denying Brooks's motion to withdraw her admissions. Therefore, the Court of Appeals affirmed the judgment of the Prentiss County Circuit Court.

Affirmed - 2016-CA-00487-COA (Mar. 14, 2017)

Opinion by Judge Wilson

Hon. Thomas J. Gardner III (Prentiss County Circuit Court)

Daniel M. Czamanske Jr. for Appellant - Thomas L. Kirkland Jr. & Andy Lowry for Appellee

Briefed by [Catherine Norton](#)

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DELOGE V. DESOTO COUNTY SHERIFF'S DEP'T

CIVIL - OTHER

CIVIL PROCEDURE - MOTION TO DISMISS - EVIDENCE OUTSIDE PLEADINGS - The court may consider the contents of a complaint, the documents attached to a complaint, and the documents that are referred to in a complaint, if they are central to the plaintiff's claim, even if not attached to the complaint

CIVIL PROCEDURE - EVIDENCE - MISSISSIPPI PUBLIC RECORDS ACT EXEMPTION - Pursuant to Miss. Code Ann. § 25-61-12(2)(a), when in the possession of a law enforcement agency, investigative reports shall be exempt from the Mississippi Public Records Act

CIVIL PROCEDURE - EVIDENCE - SEIZED UNDER SEARCH WARRANT - Property seized under a search warrant is an exercise of the police power of the State, and the State has the authority to keep and maintain control of the property until it is no longer needed in a criminal prosecution or investigation

CONSTITUTIONAL LAW - SIXTH AMENDMENT - CONFRONTATION CLAUSE - The Confrontation Clause of the Sixth Amendment guarantees that "in all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him" and is not implicated in a civil action

FACTS

Steven DeLoge was arrested in Cheyenne, Wyoming for sexually abusing the eight-year-old daughter of Katherine Lowery. Following a guilty plea, Wyoming officials and the FBI forwarded collected evidence to the DeSoto County Sheriff's Department (DCSD) to assist in its investigation of the disappearance of Lowery, in which DeLoge was a suspect. DeLoge submitted a public-records request under the Mississippi Public Records Act to DCSD regarding this evidence. The Mississippi Ethics Commission found that the records sought by DeLoge were investigative reports and thus exempted from production under Miss. Code Ann. § 25-61-12. DeLoge filed a complaint in the DeSoto County Chancery Court, arguing that DCSD improperly denied his request. DCSD moved to dismiss the complaint, arguing that DeLoge's records request fell within the investigative reports exemption to the Act. The trial court granted DCSD's motion to dismiss. DeLoge appealed.

ISSUES

Whether (1) the trial court erred by not converting DCSD's motion to dismiss to a summary-judgment proceeding; (2) the trial court erred by granting DCSD's motion to dismiss; and (3) DeLoge's constitutional rights were violated.

HOLDING

(1) Because the trial court properly considered documents and evidence that were central to DeLoge's claim, the trial court did not err by not converting DCSD's motion to dismiss to a summary-judgment proceeding. (2) Because the evidence DeLoge requested was investigative, it fell under the exemption to the Mississippi Public Records Act. Consequently, DeLoge failed to state a claim upon which relief could be granted, and the trial court properly granted DCSD's motion to dismiss. (3) Because the evidence was seized under a search warrant and DCSD has the authority to keep evidence until it is no longer needed in an investigation, DeLoge's constitutional rights were not violated. The Confrontation Clause was not implicated because this was a civil action. Therefore, the Court of Appeals affirmed the judgment of the DeSoto County Chancery Court.

Affirmed - 2015-CP-01590-COA (Mar. 14, 2017)

Opinion by Chief Judge Lee

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

Pro se for Appellant - Robert E. Quimby for Appellees

Briefed by [Kyle Hansen](#)

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PIGOTT V. TAYLOR

CIVIL - PERSONAL INJURY

TORTS - MEDICAL MALPRACTICE - STATUTE OF LIMITATIONS - Miss. Code Ann. § 15-1-36(2) provides that a medical-malpractice action must be filed within two (2) years from the date the alleged act, omission, or neglect shall or with reasonable diligence might have been first known or discovered

TORTS - MEDICAL MALPRACTICE - SUFFICIENT KNOWLEDGE - The statute of limitations is tolled by the discovery rule until the plaintiff (1) has knowledge of the injury, (2) has knowledge of the cause of the injury, and (3) knows the relationship between the practitioner and the injury

FACTS

Nancy Pigott filed a medical-malpractice complaint against Dr. Jeffrey Taylor and asserted that Dr. Taylor was negligent in performing dental-implant surgery on her in 2010. The trial court concluded that the statute of limitations on Pigott's claim expired before Pigott ever filed her complaint. The trial court granted Dr. Taylor's motion for summary judgment and dismissed Pigott's complaint with prejudice. Pigott appealed.

ISSUE

Whether the trial court erred in granting Dr. Taylor’s motion for summary judgment.

HOLDING

Because the record reflects that Pigott, by exercising reasonable diligence, should have reasonably discovered Dr. Taylor’s alleged negligence following her self-referral to a pain management specialist in 2012, the two-year statute of limitations on Pigott’s claim expired by the time she filed her complaint in 2014. Consequently, the trial court did not err in granting Dr. Taylor’s motion for summary judgment. Therefore, the Court of Appeals affirmed the judgment of the Jackson County Circuit Court.

Affirmed - 2016-CA-00187-COA (Mar. 14, 2017)

Opinion by Judge Carlton

Hon. Dale Harkey (Jackson County Circuit Court)

Scott Corlew for Appellant - Jessica B. McNeel & John A. Banahan for Appellee

Briefed by [Lora Wuerdeman](#)

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SMITH V. STATE

CIVIL - OTHER

APPELLATE PROCEDURE - MOOTNESS - EXCEPTIONS - An appeal that is “capable of repetition yet evading review,” though moot, must possess two qualities: (1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration; and (2) there was a reasonable expectation that the same complaining party would be subject to the same action again

APPELLATE PROCEDURE - MOOTNESS - EXCEPTIONS - There is an exception to the general rule as respects moot cases, when the question concerns a matter of such a nature that it would be distinctly detrimental to the public interest that there should be a failure by dismissal to declare and enforce a rule for future conduct

CIVIL PROCEDURE - CIVIL COMMITMENT - JURISDICTION - Under Miss. Code Ann. § 41-21-74(4), the chancery court of the county where the public facility is located or the committing court shall have jurisdiction over matters concerning outpatient commitments when such an order is sought subsequent to an inpatient course of treatment

CIVIL PROCEDURE - CIVIL COMMITMENT - JURISDICTION - Under Miss. Code Ann. § 41-21-83, if a hearing is requested as provided in § 41-21-74, the hearing shall be held in the chancery court of the county where the facility is located; however, if the patient is confined at the Mississippi State Hospital at Whitfield, Mississippi, the hearing shall be conducted by the Chancery Court of the First Judicial District of Hinds County, Mississippi

FACTS

The Leflore County Chancery Court granted a petition to have Ralph Arnold Smith Jr. involuntarily committed for inpatient treatment in the Mississippi State Hospital at Whitfield (“Whitfield”) after he was found incompetent to stand trial on criminal charges. Smith filed a petition in the Hinds County Chancery Court for a hearing on the question of Smith’s commitment for further treatment. The Hinds County Chancery Court determined that Smith needed to continue his inpatient treatment at Whitfield. Smith then filed a motion with the Leflore County Chancery Court seeking outpatient treatment, which the court denied. Smith then filed a petition for outpatient treatment with the Rankin County Chancery Court. The State moved to dismiss the petition, arguing that the Hinds County Chancery Court was statutorily required to hear a petition for outpatient treatment. The Rankin County Chancery Court agreed that it lacked jurisdiction and granted the State’s motion to dismiss. Smith appealed. During the pendency of the appeal, Smith successfully petitioned the Hinds County Chancery Court’s release from Whitfield for outpatient treatment.

ISSUES

Whether (1) Smith’s case was moot and (2) the trial court erred as a matter of law in granting the State’s motion to dismiss.

HOLDING

(1) Because the subject of the appeal was the Rankin County Chancery Court’s dismissal of Smith’s petition for outpatient treatment, which Smith timely appealed while committed, and because there was a reasonable expectation that Smith could be subject to the same action again, Smith’s appeal, though moot, fell into the “capable of repetition yet evading review” exception to the mootness doctrine. Smith’s appeal involved a question affecting the public interest, which is also an exception to the mootness doctrine. (2) Because Smith was indisputably confined at Whitfield when he filed his petition for outpatient treatment, Miss. Code Ann. § 41-21-83 required that the matter be resolved by the Chancery Court of the First Judicial District of Hinds County and the issue was without merit. Therefore, the Court of Appeals affirmed the judgment of the Rankin County Chancery Court.

Affirmed - 2015-CA-01471-COA (Mar. 14, 2017)

Opinion by Judge Ishee

Hon. John S. Grant III (Rankin County Chancery Court)

William Charles Bell for Appellant - Benny McCalip “Mac” May, Timothy Hutson Jones, & Harold Edward Pizzetta III (Att’y Gen. Office) for Appellees

Briefed by [Mallory Bland](#)

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TRAVIS V. GMAC MORTGAGE, LLC

CIVIL - REAL PROPERTY

TRIAL - APPEALS - PROCEDURAL BAR - Issues that are not raised at trial are procedurally barred on appeal; failure to cite relevant authority to support an argument results in waiver of the issue on appeal

EQUITY - PROPERTY - EQUITABLE ESTOPPEL - If one man knowingly, though he does it passively by looking on, suffers another to purchase, and expend his money on land, under an erroneous opinion of title, without making known his claim, he should not afterwards be permitted to exercise his legal right against such person; it would be an act of fraud and injustice, and his conscience is bound by equitable estoppel

CONTRACTS - PROPERTY - UNJUST ENRICHMENT - Unjust enrichment applies to situations where there is no legal contract and the person sought to be charged is in possession of money or property which in good conscience and justice he should not retain but should deliver to another

FACTS

In 2002, Donald Travis received a deed to a parcel of land, Parcel A, and began constructing a house on the property. Donald and his wife signed a promissory note and deed of trust pledging their home, improvements, and Parcel A as security for a construction loan to build the home. In 2010, Donald and his wife defaulted on the loan, and the property went into foreclosure. His brother and sister-in-law, Kelvin and Carolyn Travis, tried to buy back the home, but the contract for the sale was cancelled when it was discovered that the home was built not only on Parcel A but also on additional parcels of land belonging to Donald and Kelvin’s mother. The deed was foreclosed on and conveyed to GMAC Mortgage LLC in February 2012. Travis and his wife obtained the additional parcels of land from his mother and moved into the house in July 2012. They lived in the home for three years, rent free, despite knowing that GMAC claimed title to Parcel A. GMAC filed suit and proposed a property exchange where they received the home along with property equal to the size of Parcel A while the Travises received acreage equal to the other parcels. The chancellor applied the doctrines of equitable estoppel and unjust enrichment, resulting in the proposed exchange of the land, a constructive trust, and the ejectment of the Travises from the home. The Travises appealed.

ISSUE

Whether the chancellor abused her discretion when, applying the doctrines of equitable estoppel and unjust enrichment, she ordered the divestiture and exchange of certain real property from Kelvin and Carolyn Travis to GMAC.

HOLDING

Because the Travises failed to raise their issues at trial, plead any affirmative defenses, bring any counterclaims or cite any relevant authority to support their argument, their claims on appeal were waived. Because Donald, Kelvin and their mother passively looked on while the home was constructed on multiple parcels and never made a claim to the land, the chancellor properly found that they were equitably estopped from claiming title. Lastly, because the Travises occupied the home, rent free, with actual notice that GMAC had a claim of right, the chancellor's finding of unjust enrichment and the imposition of a constructive trust was justified. Therefore, the Court of Appeals affirmed the judgment of the Perry County Chancery Court.

Affirmed - 2015-CA-01790-COA (Mar. 14, 2017)

Opinion by Chief Judge Lee

Hon. Dawn H. Beam (Perry County Chancery Court)

Maurice McIntosh Forsyth for Appellants - Terry L. Caves & Risher Grantham Caves for Appellee

Briefed by [Desire'e Martinelli](#)

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WALKER V. DAVITA HEALTH CARE PARTNERS, INC.

CIVIL - CONTRACT

CIVIL PROCEDURE - PLEADINGS - SUFFICIENCY - A motion under Miss. R. Civ. P. 12(b)(6) tests the legal sufficiency of a complaint and will only be granted if there appears to a certainty that the plaintiff is entitled to no relief under any set of facts that could be proven in support of the claim

EMPLOYMENT LAW - EMPLOYMENT-AT-WILL - TERMINATION - When there is no written employment contract, the employment relationship is at-will, which means that an employee may be discharged at the employer's will for good reason, bad reason, or no reason at all, excepting only reasons independently declared legally impermissible

EMPLOYMENT LAW - EMPLOYMENT-AT-WILL - EXCEPTIONS - There is a narrow public policy exception to the employment-at-will doctrine in two circumstances: (1) an employee who refuses to participate in an illegal act shall not be barred by the common law rule of employment-at-will from bringing an action in tort for damages against his employer, and (2) an employee who is discharged for reporting illegal acts of his employer to the employer or anyone else is not barred by the employment-at-will doctrine from bringing action in tort for damages against his employer

EMPLOYMENT LAW - EMPLOYMENT-AT-WILL - ILLEGAL ACT - Applicability of the illegal act exception to the employment-at-will doctrine does not require that a crime has already been committed, but it does require that the acts complained of warrant the imposition of criminal penalties, as opposed to mere civil penalties

FACTS

Contenna Walker was terminated from her at-will position at DaVita Health Care after refusing to refute allegations that her supervisor had improperly disseminated personal information about other employees. Walker sued for wrongful termination, arguing that her claim fell under the public policy exception to the employment-at-will doctrine because she refused to participate in an illegal act. Walker's complaint, however, failed to identify an actionable illegality. The trial court granted DaVita Health Care's motion to dismiss, finding that Walker's claims failed as a matter of law. Walker appealed.

ISSUE

Whether the trial court erred in finding Walker’s complaint was legally insufficient, thereby granting DaVita Health Care’s motion to dismiss.

HOLDING

Because Walker failed to identify any actionable illegality, she did not satisfy the illegal act exception to the employment-at-will doctrine. Therefore, the Court of Appeals affirmed the judgment of the Madison County Circuit Court.

Affirmed - 2015-CA-01721-COA (Mar. 14, 2017)

Opinion by Presiding Judge Irving

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

Hiawatha Northington II for Appellant - Scott W. Pedigo & Nakimuli Oni Davis-Primer for Appellees

Briefed by [Alison Guider](#)

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COURT OF APPEALS - POST-CONVICTION RELIEF

CONNER V. STATE

CIVIL - POST-CONVICTION RELIEF

CRIMINAL PROCEDURE - POST-CONVICTION RELIEF - OUT-OF-TIME APPEALS - A prisoner may seek an out-of-time appeal in a motion for post-conviction relief, but such a claim is still subject to the three-year statute of limitations

CRIMINAL APPEALS - ATTORNEY AND CLIENT - OMISSIONS - Although it is suggested that criminal defense lawyers obtain a signed writing regarding the client’s decision whether or not to pursue an appeal, it is not a rule of law from which reversible error can be found

FACTS

On August 25, 2004, a jury found Andre Conner guilty of murder. On August 27, 2004, the circuit court entered a final judgment of conviction and sentenced Conner to life imprisonment. Conner was represented at trial by privately retained counsel, and on August 31, 2004, his attorney filed a timely motion for a new trial. For reasons not disclosed by the record, more than four years passed without ruling on the motion. On November 18, 2008, Conner’s brother filed a petition for an out-of-time appeal on Conner’s behalf. On March 26, 2009, the court entered an order denying Conner’s motion for a new trial. Almost seven years later, on February 19, 2016, Conner filed a motion for post-conviction relief requesting leave to file an out-of-time appeal, alleging that his trial counsel was ineffective because he failed to consult with Conner about an appeal, and that he was entitled to representation by the Indigent Appeals Division of the Office of the State Public defender. On March 28, 2016, the circuit court denied Conner’s motion, noting the lack of evidence that Conner asked his attorney to file an appeal, or that his attorney had agreed to represent him on appeal. Conner appealed.

ISSUE

Whether the circuit court erred in denying Conner an out-of-time appeal, nearly seven years after his time for filing a notice of appeal expired.

HOLDING

Because Conner presented no evidence that would bring his claim within any exception to the three-year statute of limitations, the motion made almost seven years after the denial of a petition for a new trial was properly dismissed. Therefore, the Court of Appeals affirmed the judgment of the Harrison County Circuit Court.

Affirmed - 2016-CP-00578-COA (Mar. 14, 2017)

Opinion by Judge Wilson

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

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

Briefed by [Amber Kipfmiller](#)

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MORAN V. STATE

CIVIL - POST-CONVICTION RELIEF

CRIMINAL PROCEDURE - SENTENCING - HABITUAL OFFENDER - Miss. Code Ann. § 99-19-81 provides that every person convicted in this state of a felony who shall have been convicted twice previously of any felony or federal crime upon charges separately brought and arising out of separate incidents at different times and who shall have been sentenced to separate terms of one year or more in any state and/or federal penal institution, whether in this state or elsewhere, shall be sentenced to the maximum term of imprisonment prescribed for such felony, and such sentence shall not be reduced or suspended nor shall such person be eligible for parole or probation

CRIMINAL PROCEDURE - SENTENCING - HABITUAL OFFENDER - Separate convictions based upon different crimes, even if the crimes of which a defendant is convicted occurred on the same day, may serve as prior offenses to be considered in sentencing a defendant as a habitual offender

APPELLATE PROCEDURE - STARE DECISIS - INTERMEDIATE APPELLATE COURT - The Court of Appeals, sitting as an intermediate appellate court, is obligated to follow precedent established by the Mississippi Supreme Court and does not have the authority to overrule a Supreme Court decision

FACTS

Lavern Moran pled guilty to two counts of burglary of a dwelling and was sentenced to ten years on each count, with the sentences to run concurrently. Because Moran pled guilty as a habitual offender and the court found that his prior convictions met the requirements of Miss. Code Ann. § 99-19-81, the court ordered that Moran’s total sentence of ten years be served day for day without hope of parole or probation. Moran filed a petition for post-conviction relief, in which he argued that his prior felony convictions for robbery and uttering a forgery were entered on the same day, and did not meet the requirements of Miss. Code Ann. § 99-19-81. Moran acknowledged that his argument was foreclosed by Supreme Court precedent. The trial court denied Moran’s petition. Moran appealed.

ISSUE

Whether the trial court erred by sentencing Moran as a habitual offender.

HOLDING

Because Mississippi Supreme Court precedent squarely holds that separate convictions that were entered on the same day may serve as prior offenses, the trial court did not err by sentencing Moran as a habitual offender. Consequently, Moran’s petition for post-conviction relief was properly denied. Therefore, the Court of Appeals affirmed the judgment of the Harrison County Circuit Court.

Affirmed - 2016-CA-00188-COA (Mar. 14, 2017)

Opinion by Judge Wilson

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

Michael W. Crosby for Appellant - Scott Stuart (Att’y Gen. Office) for Appellee

Briefed by [TreMarcus Rosemon](#)

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COURT OF APPEALS - CRIMINAL CASES

HEDRICK V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - APPEALS - INEFFECTIVE ASSISTANCE OF COUNSEL - When appellate counsel represents an indigent defendant and does not believe his/her client presents any arguable issues on appeal, the attorney must: (1) file and serve a brief in compliance with Miss. R. App. Pro. 28(a)(1)-(4), (7); (2) certify in the brief that there are no arguable issues supporting the client's appeal, and that the attorney has reached this conclusion after scouring the record thoroughly; (3) send a copy of the brief to the defendant, inform the defendant that counsel could find no arguable issues in the record, and advise the defendant of his/her right to file a pro se brief

CRIMINAL PROCEDURE - APPEALS - INEFFECTIVE ASSISTANCE OF COUNSEL - In order to scour the record thoroughly, an attorney should specifically examine: (a) the reason for the arrest and the circumstances surrounding the arrest; (b) any possible violations of the client's right to counsel; (c) the entire trial transcript; (d) all rulings of the trial court; (e) possible prosecutorial misconduct; (f) all jury instructions; (g) all exhibits, whether admitted into evidence or not; and (h) possible misapplication of the law in sentencing

FACTS

Between January 16 and January 17, 2015, small sums of money, a laptop computer, a camera, a cordless drill, and guns were stolen from Dolores Hubbard's home. Malcolm Hedrick later informed Hubbard that he and Jonathan Townsend burglarized Hubbard's home. After trial, the jury found Hedrick guilty of burglary of a dwelling, and Hedrick was sentenced to a term of twenty-five years' imprisonment. Hedrick's case was then assigned to an attorney with the Office of State Public Defender, Indigent Appeals Division (IAD), who submitted a brief stating he was unable to find any arguable issues on appeal. Hedrick's attorney requested forty additional days for Hedrick to file a pro se brief if he desired to do so. Hedrick appealed.

ISSUE

Whether the defendant's appointed counsel's performance constituted ineffective assistance of counsel.

HOLDING

Because Hedrick's counsel conducted a good faith inquiry and complied with the requirements of Miss. R. App. Pro. 28(a)(1)-(4), (7), there was no arguable issue for appeal. Therefore, the Court of Appeals dismissed Hedrick's ineffective assistance of counsel claim without prejudice and affirmed the judgment of the Claiborne County Circuit Court.

Affirmed - 2015-KA-01568-COA (Mar. 14, 2017)

Opinion by Judge Ishee

Hon. Lamar Pickard (Claiborne County Circuit Court)

George T. Holmes (Pub. Def. Office) for Appellant - Laura Hogan Tedder (Att'y Gen. Office) for Appellee

Briefed by [Blake Brookshire](#)

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MORGAN V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - COMPETENCY EVALUATION - There is no requirement that a trial judge order a competency hearing; the test is whether the trial judge received information which, objectively considered,

should reasonably have raised a doubt about a defendant's competence and alerted him to the possibility that the defendant could neither understand the proceedings, appreciate their significance, nor rationally aid her attorney in her defense

CRIMINAL PROCEDURE - COMPETENCY EVALUATION - APPELLATE REVIEW - When a trial court determines that a defendant is competent to stand trial, an appellate court will not overturn such a finding unless it was manifestly against the overwhelming weight of the evidence

CRIMINAL PROCEDURE - SUPPRESSION OF EVIDENCE - A trial court's denial of a motion to suppress may be reversed only if (1) the incorrect legal principle was applied; (2) there was no substantial evidence to support a voluntary, knowing, and intelligent waiver of *Miranda* rights; and (3) the denial was a result of manifest error

CRIMINAL PROCEDURE - SUPPRESSION OF EVIDENCE - APPELLATE REVIEW - The standard of manifest error is high, and an appellate court cannot reverse unless the trial judge's ruling has gone against the substantial weight of evidence

FACTS

In 2012, Sandra Morgan (Morgan) was diagnosed with bipolar personality disorder and depression. In early 2014, Morgan met Devonta Anderson. Morgan moved Anderson into her home that she shared with her husband, Billy. Morgan often complained to Anderson about Billy's past treatment of her and asked Anderson to kill Billy. Anderson reluctantly agreed to do so but later changed his mind. The Choctaw County Sheriff's Department learned of this failed murder conspiracy through Anderson. Later, Morgan voluntarily went to the sheriff's department, stated that she understood her rights, and signed a waiver-of-rights form. Morgan then gave a statement to investigators and was arrested. One week later, Morgan informed one of the investigators that she wanted to speak with him again. Morgan executed another waiver-of-rights form and gave a second statement which was recorded in its entirety. Before trial, Morgan filed motions to suppress the two statements. The trial court found that the first statement was tainted; however, it found that the second statement should be allowed in evidence because it was fully recorded and voluntarily given. Morgan also filed a motion for a psychiatric evaluation. Billy was the only witness called to substantiate Morgan's claim of mental incompetence, and no other evidence was presented. The trial court found that Billy's testimony failed to substantiate her claim and that Morgan was competent to stand trial. A jury found Morgan guilty of conspiracy to commit murder and sentenced her to fifteen years in the custody of the Mississippi Department of Corrections. Morgan appealed.

ISSUES

Whether the trial court erred in denying (1) Morgan's motion for a mental-competency evaluation and (2) her motion to suppress her second statement to the police.

HOLDING

(1) Because the testimony of Morgan's husband regarding her mental state was insufficient to raise questions of her mental competency and failed to provide a reasonable ground to suspect mental incompetence, the trial court did not err in denying her motion for a psychiatric evaluation. (2) Because Morgan's second statement to the police was voluntary and knowing and she executed a waiver-of-rights form, the trial court did not err in admitting her second statement into evidence. Therefore, the Court of Appeals affirmed the judgment of the Choctaw County Circuit Court.

Affirmed - 2015-KA-00964-COA (Mar. 14, 2017)

Opinion by Judge Westbrook

Hon. C.E. Morgan III (Choctaw County Circuit Court)

Hunter Nolan Aikens & George T. Holmes (Pub. Def. Office) for Appellant - Jason L. Davis & Kaylyn Havrilla McClinton (Att'y Gen. Office) for Appellee

Briefed by [Brittany Barbee](#)

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TITUS V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - NEW TRIAL - A new trial will not be ordered unless the court is convinced that the verdict is so contrary to the overwhelming weight of the evidence that to allow the verdict to stand would be to sanction an unconscionable injustice; this high standard is necessary because any factual disputes are properly resolved by the jury, not by an appellate court

EVIDENCE - WITNESSES - CREDIBILITY - It is well established that it is within the province of the jury to determine the credibility of witnesses; the jury may believe or disbelieve, accept or reject the utterances of any witness

EVIDENCE - CIRCUMSTANTIAL EVIDENCE - Direct evidence is unnecessary to support a conviction so long as sufficient circumstantial evidence exists to establish guilt beyond a reasonable doubt

CRIMINAL LAW - MURDER - DELIBERATE DESIGN - Pursuant to Miss. Code Ann. § 97-3-19(1)(a), the killing of a human being without the authority of law by any means or in any manner shall be murder when done with deliberate design to effect the death of the person killed, or of any human being

FACTS

A jury found Marvin Titus guilty of deliberate-design murder and display of a firearm during the commission of the murder. At trial, law enforcement admitted that no physical evidence was discovered to connect Titus to the shooting of Chris Walls. Stephanie Moudy testified that she was hiding in another part of Walls's house when a man came in, got into an altercation over drugs, and then shot Walls. Moudy identified the shooter as Titus based on his voice and the nickname he used to introduce himself. Two other witnesses testified that Titus told each of them separately that he had been involved in a shootout outside Walls's home on the day of Walls's murder and that he may have accidentally shot Walls. The Washington County Circuit Court sentenced Titus as a habitual offender under Miss. Code Ann. § 99-19-81 to life imprisonment for the murder conviction and to a consecutive ten-year term for the firearm enhancement. Titus filed an unsuccessful motion for a judgment notwithstanding the verdict or, in the alternative, a new trial, which was also denied. Titus appealed.

ISSUE

Whether the circuit court erroneously denied Titus's motion for a new trial because the verdict was against the overwhelming weight of the evidence.

HOLDING

Because witness credibility is determined by the jury and circumstantial evidence can be sufficient to prove guilt, the circuit court did not abuse its discretion in denying Titus's motion for a new trial. Therefore, the Court of Appeals affirmed the judgment of the Washington County Circuit Court.

Affirmed - 2015-KA-00927-COA (Mar. 14, 2017)

Opinion by Judge Carlton

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

Benjamin Allen Suber (Pub. Def. Office) for Appellant - Laura Hogan Tedder (Att'y Gen. Office) for Appellee

Briefed by [Victoria Jones](#)

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