

MISSISSIPPI SUPREME COURT DECISIONS – NOVEMBER 16, 2017**SUPREME COURT - CIVIL CASES****BRYANT V. DICKERSON****CIVIL - ELECTION CONTEST**

CIVIL PROCEDURE - ELECTION CONTEST - STANDARD OF REVIEW - Miss. Code Ann. § 23-15-933 states that the Supreme Court may review a trial court's findings of fact in an election contest if less than three commissioners attend the trial court's proceedings or if one or more of the commissioners disagree with the trial court's findings

CIVIL PROCEDURE - ELECTION CONTEST - RECORD REQUIREMENTS - Miss. Code Ann. § 23-15-933 does not require a trial court to conduct a "roll-call" commemorating which commissioners attended the trial court's proceedings, to dictate into the record the days of attendance, or to note how the commissioners voted

FACTS

After losing in the Sunflower County Board of Supervisors Democratic Primary election on August 4, 2015, Barry Bryant filed a "Petition to Contest Qualifications" against his opponent Gloria Dickerson with Sunflower County's Executive Committee of the Democratic Party. Pursuant to Miss. Code Ann. § 23-15-927, Bryant also filed this petition in Sunflower County Circuit Court. Bryant and Dickerson ran as nominees for the position of supervisor for fifth district of Sunflower County. Bryant claimed that Dickerson was not a domiciled resident of Sunflower County and failed to become one before the election took place. Specifically, Bryant alleged that Dickerson was a resident of Hinds County at the time she filed her qualifying papers. The trial court held a two-day hearing, ultimately issuing an order that dismissed Bryant's petition and stated that the five election commissioners in Sunflower County agreed that Dickerson was a county resident. Bryant appealed.

ISSUES

Whether the trial court's findings of fact (1) warranted review by the Supreme Court in an election contest if five election commissioners concurred with its decision; and (2) demonstrated manifest error regarding Dickerson's residency.

HOLDING

(1) Because Miss. Code Ann. § 23-15-933 requires at least three election commissioners to attend court proceedings about an election contest, and Bryant failed to put forth evidence to refute evidence that all five commissioners were present, the Supreme Court denied review of the circuit court's factual findings. (2) Because residency is a question of fact, the Supreme Court would not review the circuit court's determination that Dickerson was a resident of Sunflower County. Therefore, the Supreme Court affirmed the judgment of the Sunflower County Circuit Court.

Affirmed - 2016-EC-00416-SCT (Nov. 16, 2017)

En Banc Opinion by Justice Coleman

Hon. L. Breland Hilburn (Sunflower County Circuit Court)

Jamie Ferguson Jacks for Appellant - Tom P. Calhoun III for Appellee

Briefed by [Katherine Farese](#)

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MISS. DEP'T. OF AUDIT V. GULF PUBL'G CO.

CIVIL - STATE BOARDS & AGENCIES

MISS. PUB. RECORDS ACT - WRONGFUL DENIAL - PENALTY - Under Miss. Code Ann. § 25-61-15, any person who denies access to any public record which is not exempt may be liable civilly in a personal capacity in a sum not to exceed \$100

MISS. PUB. RECORDS ACT - EXEMPTIONS - INVESTIGATIVE REPORTS - Documents may be exempted from release in public records requests if they disclose the identity of witness or impede ongoing investigations

MISS. PUB. RECORDS ACT - EXEMPTIONS - GRAND JURY SECRECY - Public records obtained by a grand jury may be exempted if their release endangers the secrecy of grand jury proceedings

CIVIL PROCEDURE - CO-ORDINATE JURISDICTION - CONFLICTS BETWEEN STATE & FEDERAL COURTS - When the state and federal courts both have jurisdiction, whichever court first takes a subject matter of litigation into its control must be permitted to exhaust its remedy before the other court shall attempt to take it for its purpose

FACTS

During an investigation of the Department of Marine Research (DMR), a subsidiary newspaper of Gulf Publishing Company submitted a written records request to the DMR. The DMR agreed to comply with the newspaper's request but could not agree on the costs of the request with the newspaper. Before DMR could respond to second records request by the newspaper, a Harrison County grand jury subpoenaed the same records. The subpoena required that the records be kept in place and only released to the Department of Audit. Gulf Publishing then sued DMR in Harrison County Chancery Court for access to the records. The circuit court subsequently revised the subpoena to allow Gulf Publishing to access the records. While DMR handed over electronic records to Gulf Publishing, the DMR did not hand over the not-backed-up hard copy records that were already obtained by the State Auditor. Gulf Publishing received permission to join the Department of Audit as a party to the suit. The Department of Audit asserted that the records in its possession were exempt under the "investigative report" exemption to the Mississippi Public Records Act (MPRA). The chancellor instructed the Department of Audit to comply with Gulf Publishing's records request. A federal subpoena was issued separately before DMR could supply the records to Gulf Publishing. The chancellor issued an emergency order seizing the records and ordering the chancery court to copy the records so that Gulf Publishing could get copies before the Department of Audit complied with the federal subpoena. The Department of Audit had already begun to comply with the federal subpoena and the chancellor held the Department in contempt. The Attorney General's office requested a stay pending interlocutory appeal, but the Supreme Court denied the AG's petition. Gulf Publishing filed a motion for contempt that was granted. The Department of Audit then requested—and was granted permission from the federal district court—to release the records to Gulf Publishing. A final order by the chancery court asserted bad faith by DMR, held the Department of Audit liable for attorney's fees and expenses due to being held in contempt, and fined numerous individuals \$100. The Department of Audit appealed.

ISSUES

Whether the trial court erred in (1) finding that the Department of Marine Resources violated the MPRA, (2) finding that the Department of Audit violated the MPRA, and (3) fining numerous individuals \$100 as penalty for denying the records request of Gulf Publishing when no exemption applied.

HOLDING

(1) Because the Department of Marine Resources acted in good faith to resolve the public-records request, the Department of Marine Resources did not violate the MPRA. (2) Because the requested documents did not compromise the secrecy of a grand jury or constitute investigative reports exempted by the MPRA, the judge did not err in finding the Department of Audit violated the MPRA. (3) Because the only individual who knowingly denied a proper records request was Director of Investigations Huggins, the trial judge erred by fining individuals other than Director Huggins. Therefore, the Supreme Court affirmed in part, reversed in part, vacated in part, and rendered in part the judgment of the Harrison County Chancery Court.

DISSENT

Justice Coleman dissented, arguing that the requested documents were exempted under the MPRA's investigative reports exemption and that the Department of Audit should not have been held in criminal contempt without recusing for the matter to be heard by another judge. Judge Coleman also argued the majority declined to address other assignments of error raised by the appellants that could result in a reversal of the chancellor.

Affirmed in Part; Reversed in Part; Vacated in Part; Rendered in Part - 2013-CT-02002-SCT (Nov. 16, 2017)

En Banc Opinion by Justice Beam

Hon. Jennifer T. Schloegel (Harrison County Chancery Court)

Margaret P. Ellis, Judy T. Martin, Arthur F. Jernigan Jr., John G. Corlew, Robert V. Greenlee, Alan M. Purdie, Melissa C.

Patterson, Ronald G. Peresich, Roy Merritt Tipton, William V. Westbrook III, Samuel E. L. Anderson, Lynn Chain Wall, John T.

Kitchens, Thomas Eugene Whitfield Jr., & Dion Jeffery Shanley for Appellant - Henry Laird for Appellee

Consolidated with:

2014-CT-00894-SCT (Nov. 16, 2017)

Hon. Jennifer T. Schloegel (Harrison County Chancery Court)

Arthur F. Jernigan, Ronald G. Peresich, John T. Kitchens, Alan M. Purdie, Margaret P. Ellis, John G. Corlew, William V.

Westbrook, Roy Merritt Tipton, Dion Jeffery Shanley, Melissa C. Patterson, Samuel E.L. Anderson, Judy T. Martin, Lynn Chain

Wall, Robert V. Greenlee, & Thomas Eugene Whitfield for Appellant - Henry Laird for Appellee

Briefed by [Jacob Swatley](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – NOVEMBER 14, 2017

COURT OF APPEALS - CIVIL CASES

ALEXANDER V. PITTS

CIVIL - REAL PROPERTY

CIVIL - APPEAL - ERROR - Failure to affirmatively demonstrate error with an issue in the court below waives an issue on appeal

CIVIL - APPEAL - SANCTIONS - If an appeal is determined to be frivolous in a civil case, the Court of Appeals can award just damages and single or double costs to the appellee

FACTS

In September 2011, Delbert Ray Alexander filed a complaint for a preliminary injunction to prevent Billy Joe Pitts Jr. from trespassing over a common boundary line. Pitts had bought some real property from an individual who had acquired it through a tax sale and successfully quieted title to the property. In his proceeding, Alexander conceded that the property had been surveyed and alleged that Pitts had removed some of Alexander's personal property from the disputed land. Pitts moved to dismiss Alexander's complaint on the ground that Alexander's claim had lapsed as a result of the tax sale. Pitts admitted he removed some of Alexander's personal property, and he also stated that he and Alexander had agreed to a survey and to abide by those results. On October 3, 2011, the chancellor conducted a hearing and entered an order denying Alexander's request for a preliminary injunction, but Alexander had 30 days to remove his personal property from the land and amend his complaint to reflect his ownership through adverse possession. By July 2012, Alexander had not amended his complaint, so Pitts made another motion to dismiss. Alexander filed an amended complaint nearly a year later. Pitts moved to dismiss on the ground that it was untimely because Alexander's interest in the land lapsed because of the tax sale. Another hearing was conducted in November 2013, resulting in a proposed stipulation of facts and order by Pitts's attorney. Alexander's attorney had not signed it as of June 2014, and in November 2015, Pitts's attorney filed a motion for a trial setting. This motion stated that Alexander would be filing an appeal to the Mississippi Supreme Court, but no appeal was filed. The chancellor entered a stipulation of facts and

order on February 9, 2016, which stated that Alexander said he believed he was aggrieved when he did not receive notice of the tax sale and that he was not served with personal service. The chancellor held that Alexander's adverse possession claim failed because his interest in the land would have lapsed and all requirements of public notice for the tax sale were met. Alexander, through new counsel, filed a motion for a new trial to put on evidence of the total lack of substantive due process regarding the tax sale. The chancellor denied an order for a new trial and adopted the February 9, 2016 order as the final judgment. Alexander appealed.

ISSUE

Whether Alexander could collaterally attack the tax sale and complaint and confirmation of title to the land.

HOLDING

Because Alexander failed to cite authority in support of his claim that he was entitled to personal service of process incident to the tax sale or complaint to quiet and confirm title from the previous landowner, and no authority allowed Alexander to collaterally attack them through an appeal of an agreed judgment in Pitts's favor, Alexander's issues were procedurally barred on appeal. Therefore, the Court of Appeals affirmed the judgment of the Jones County Chancery Court and remanded to determine the amount of attorney's fees and costs that Pitts incurred from defending the appeal.

Affirmed & Remanded - 2016-CA-01471-COA (Nov. 14, 2017)

Opinion by Judge Greenlee

Hon. Franklin C. McKenzie Jr. (Jones County Chancery Court, Second Judicial Dist.)

Michael Duane Mitchell for Appellant - John Anthony Piazza for Appellee

Briefed by [Michael Farese](#)

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IN RE ADOPTION OF G.L.*

CIVIL - DOMESTIC RELATIONS

ADOPTION - CUSTODIAL REVIEW - EMOTIONAL TIES ANALYSIS - In determining the best interests of a child during custody disputes, the court is not required to give preference to parties based solely on the degree of kinship to the child

ADOPTION - CUSTODIAL REVIEW - PARENTING SKILLS - In evaluating the ability of prospective guardians to care for a child, the chancellor may consider the exposure that a child will have to a natural parent and whether such exposure is in the best interests of the child

CUSTODY - BEST INTERESTS ANALYSIS - ALBRIGHT FACTORS - The *Albright* factors are used by chancellors as guidelines in considering relevant factors, such as age, health, and employment of prospective parents; the court has discretion in weighing these factors to determine the best interests of the child

FACTS

The parental rights of the natural parents of G.L., a minor child, were terminated by the Hancock County Chancery Court after G.L.'s natural parents were found unconscious from ingesting oxycodone, leaving G.L. alone and unsupervised at home. G.L. was placed in the temporary care of her maternal grandparents, J.A.G. and S.G., for a short time before being placed with foster parents, B.T. and C.T. Following G.L.'s placement with foster parents, the grandparents filed a petition of custody and adoption of G.L. The foster parents then filed an intervenor's petition for adoption of G.L. As a result of these petitions, the parental rights of G.L.'s natural parents were terminated, and Ralph Price became guardian ad litem for G.L. Following the presentation of evidence, Price recommended that the foster

* The full case name is "In the Matter of the Adoption of the Minor Child Described in the Petition: J.A.G. & Wife, S.G. v. C.T. & B.T." Westlaw abbreviates this as "Adoption of J.A.G. v. C.T." However, the minor child who is the subject of the adoption suit is G.L. (not J.A.G.).

parents be granted custody and a visitation schedule be created in order to allow the grandparents to maintain access to G.L. The chancellor granted the foster parents' petition for adoption. The grandparents, J.A.G. and S.G., appealed.

ISSUES

Whether (1) the chancellor erred in considering the emotional ties of the child to her grandparents; (2) the chancellor erred in conducting an analysis of the parties' parenting skills; and (3) the *Albright* factors were unfairly and negatively skewed against the grandparents.

HOLDING

(1) Because the chancellor recognized and addressed G.L.'s relationship with her grandparents, there was no error in considering the emotional connection of G.L. to her grandparents. (2) Because the chancellor reasonably found that G.L.'s natural mother would remain an integral part of her life if custody was granted to G.L.'s grandparents, the record does not indicate abuse of discretion by the chancellor in assessing the grandparents as prospective parents. (3) Because the grandparents conceded that the chancellor's analysis of the *Albright* factors was thorough and the chancellor's findings were based on factual and legal conclusions, there was no abuse of discretion by the chancellor in considering the *Albright* factors. Therefore, the Court of Appeals affirmed the judgment to the Hancock County Chancery Court.

Affirmed - 2016-CA-00969-COA (Nov. 14, 2017)

Opinion by Judge Westbrook

Hon. James B. Persons (Hancock County Chancery Court)

Oliver E. Diaz Jr. & David Neil McCarty for Appellants - Gail D. Nicholson for Appellees

Briefed by [Kelsey Dismukes](#)

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ORR V. MORGAN

CIVIL - TORTS - OTHER THAN PERSONAL

TORTS - MALICIOUS PROSECUTION - PROBABLE CAUSE - A claim for malicious prosecution requires the plaintiff to prove a want of probable cause for the proceedings; probable cause must not be based upon inadequate and unreasonable investigation of the circumstances concerning the alleged criminal conduct

TORTS - CIVIL CONSPIRACY - CORPORATIONS - To establish a civil conspiracy, the plaintiff must prove, among other things, an agreement between two or more persons; a corporation, however, cannot conspire with itself, and acts of the agent are acts of corporation

TORTS - FALSE ARREST - PROBABLE CAUSE - A claim of false arrest must fail where there was a probable cause to make the arrest; conversely, the lack of probable cause may support a claim for false arrest

FACTS

Jamie Lynn Orr was an employee of The Buckle. On the night of July 4, 2014, Orr was working the evening shift with Nason Stephens, one of the store managers. Security footage from the store revealed that Orr was the last employee in possession of the store's iPad that night. After using the iPad at the register, Orr took it to the storeroom, which is out of view of the security camera, and returned to the front with a large purse. After some discussion with Stephens, Orr walked out to the parking lot with Stephens and another employee. The following day, Mallory Morgan, another store manager, was unable to locate the iPad. Morgan contacted the corporate office and was told to file a police report. Morgan told police that Orr last had the iPad. Morgan also signed an affidavit against Orr. Orr was arrested and charged with petit larceny but was found not guilty of the charge. Orr filed a complaint against Stephens, Morgan, and The Buckle alleging malicious prosecution, false arrest, false imprisonment, civil conspiracy, negligence, intentional infliction of emotional distress, and negligent infliction of emotional distress. After discovery, Stephens, Morgan, and The Buckle filed a motion for summary judgment, and the circuit court granted the motion. Orr appealed.

ISSUES

Whether the trial court erred in granting summary judgment with regards to the claims of (1) malicious prosecution, (2) civil conspiracy, (3) intentional infliction of emotional distress, (4) false arrest, (5) false imprisonment, (5) negligence, and (6) negligent infliction of emotional distress.

HOLDING

(1) Because a genuine issue of material fact existed as to whether The Buckle’s management team had a reasonable belief that Orr took the iPad, the circuit court erred in granting summary judgment as to the claim of malicious prosecution. (2) Because proving conspiracy requires an agreement between two people and a corporation cannot conspire with itself, there was no genuine issue of material fact to support the claim for civil conspiracy. (3) Because the The Buckle’s managers’ actions would not evoke outrage or revulsion in a civilized society, the circuit court did not err in granting summary judgment with respect to the intentional infliction of emotion distress claim. (4) Because there existed a genuine issue of material fact regarding probable cause—the lack of which may support a claim for false arrest—this issue may be considered on remand. (6) Because false imprisonment may arise from false arrest, it may also be considered on remand. (7) Because the claim for negligence simply repeats the argument for malicious prosecution, the circuit court did not err in granting summary judgment. (8) Because Orr did not prove any demonstrable injury or harm, the circuit court did not err in granting summary judgment on the negligent infliction of emotional distress claim. Therefore, the Court of Appeals affirmed in part, and reversed and remanded in part, the judgment of the Madison County Circuit Court.

PARTIAL DISSENT

Judge Carlton disagreed with the majority regarding the malicious prosecution claim, arguing that the grant of summary judgment on that claim was proper. Judge Carlton asserted that Orr failed to meet her burden of proof on two required elements: malice and want of probable cause. Judge Carlton would affirm the circuit court’s grant of summary judgment.

Affirmed in Part; Reversed & Remanded in Part - 2016-CA-01279-COA (Nov. 14, 2017)

En Banc Opinion by Judge Barnes - Partial Dissent by Judge Carlton

Hon. Steve S. Ratcliff III (Madison County Circuit Court)

John W. Christopher, Gregory John Faries, & Erik Gregory Faries for Appellant - Mark D. Morrison & William Christopher Ivison for Appellees

Briefed by [Maggie Vinzant](#)

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PENNINGTON V. CRAWFORD

CIVIL - PERSONAL INJURY

CIVIL PROCEDURE - SERVICE OF PROCESS - GOOD CAUSE - Good faith negotiations do not constitute good cause for failure to effect timely service of process

CIVIL PROCEDURE - SERVICE OF PROCESS - GOOD CAUSE - Placing blame on a process server without more is insufficient to demonstrate good cause for failure to effect timely service of process

FACTS

In 2011, William David Crawford rear-ended Evelyn Pennington’s vehicle while driving his stepfather’s vehicle. Pennington filed a complaint in 2014, three days before the statute of limitations was set to run. Pennington had summonses issued 118 days later, but he did not serve within the 120 days allowed under Miss. R. Civ. P. 4(h). Crawford and Ware moved to dismiss the suit, and Pennington responded with a request for an extension of time to serve process. The trial court found that Pennington failed to show good cause for the delay in service of process and dismissed the suit. Pennington appealed.

ISSUES

Whether the trial court erred in dismissing the suit (1) by relying on findings that were manifestly wrong or clearly erroneous, and (2) for failure to serve process within 120 days absent good cause.

HOLDING

(1) Because Pennington had ample opportunity to file and serve process, and Pennington's attorney admitted the delay in service was intentional based upon settlement negotiations, there was no abuse of discretion in the trial court's factual findings. (2) Because blame upon a process server is insufficient to demonstrate cause, substantial evidence existed to support the trial court's decision to dismiss the suit. Therefore, the Court of Appeals affirmed the judgment of the Madison County Circuit Court.

Affirmed - 2016-CA-01183-COA (Nov. 14, 2017)

Opinion by Judge Fair

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

John Preston Scanlon & Jerry L. Mills for Appellant - John Brian Hyneman for Appellees

Briefed by [Sarah Raben](#)

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COURT OF APPEALS - POST-CONVICTION RELIEF

BERRY V. STATE

CIVIL - POST-CONVICTION RELIEF

CRIMINAL PROCEDURE - GUILTY PLEA - APPEAL - Under Miss. Code Ann. § 99-35-101, where a defendant enters a plea of guilty and is sentenced, such defendant waives the right to appeal to the Mississippi Court of Appeals or Mississippi Supreme Court

CRIMINAL PROCEDURE - GUILTY PLEA - WAIVER - A valid guilty plea admits all elements of a formal criminal charge and operates as a waiver of all non-jurisdictional defects contained in an indictment, as well as all defenses that could have been presented

CRIMINAL PROCEDURE - GUILTY PLEA - COMPETENCY - The burden to prove incompetency is carried by the moving party, who must show doubt as to whether the guilty plea was voluntarily and intelligently given

POST-CONVICTION RELIEF - PETITION - MERIT - A circuit court may disregard claims made by a movant for post-conviction relief as unmeritorious, if the record of a plea acceptance hearing contradicts the movant's allegations

FACTS

Raheem Berry pled guilty to second-degree murder. The circuit court accepted Berry's plea and sentenced him to twenty years in state prison. However, a year and a half into his sentence, Berry filed a motion to vacate his conviction and sentence, which the circuit court treated as a claim for post-conviction relief. In his motion, Berry claimed to have been unaware that entering a plea of guilt waived his right to appeal and his right to raise affirmative defenses against his indictment. Berry alleged that, because he was not knowledgeable as to the waiver of rights from entering his guilty plea, his plea of guilt was given incompetently, and he was therefore entitled to relief. The circuit court considered his motion but summarily denied Berry post-conviction relief on the merits. Berry appealed.

ISSUE

Whether the trial court abused its discretion by denying Berry's motion for post-conviction relief.

HOLDING

Because the moving party has the burden of proving incompetency in the entering of a guilty plea, and because Berry swore under oath he understood his waiver of rights, the trial court did not err in denying Berry's post-conviction relief

motion. Further, the record reflected that the circuit court had no reason to doubt his competency. Therefore, the Court of Appeals affirmed the judgment of the Grenada County Circuit Court.

Affirmed - 2016-CP-00970-COA (Nov. 14, 2017)

Opinion by Judge Carlton

Hon. Joseph H. Loper Jr. (Grenada County Circuit Court)

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

Briefed by [D. Kirkwood Palmer](#)

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EASTERLING V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - PRELIMINARY HEARING - PREJUDICE - The failure to hold a preliminary hearing is harmless if it does not result in prejudice; prejudice is a prerequisite for relief

STATUTORY APPLICATION - RETROACTIVITY - If the Legislature is silent as to whether a statute applies retroactively, the courts will follow the longstanding rule in Mississippi that statutes will be construed to have prospective operation only

FACTS

In 2011, Dana Easterling pled guilty to possession of cocaine and received a fifteen-year sentence, with ten years suspended. In 2013, while on post-release supervision, Easterling was arrested and charged with driving under the influence, possession of a controlled substance, resisting arrest, and other related counts stemming from the traffic stop. On January 27, 2014, the circuit court issued an arrest warrant for violating post-release supervision conditions. Easterling was then incarcerated. On July 14, 2014, Easterling filed an inmate grievance form, and on July 23, he filed a habeas corpus petition demanding his release or a revocation hearing. The circuit court held a revocation hearing on August 1, but Easterling asked for a continuance until after the grand jury decided whether to indict or not. On September 17, the revocation hearing was held. The grand jury decided to indict Easterling on two counts of possession of a controlled substance, and the circuit court revoked Easterling’s suspended sentence. Easterling’s motion for post-conviction relief was denied after an evidentiary hearing. Easterling appealed.

ISSUES

Whether (1) the delay in holding Easterling’s revocation hearing violated his right to due process; and (2) dismissal of the revocation was required by the 2014 amendments to revocation procedure enacted by House Bill 585.

HOLDING

(1) Because Easterling offered no defense at the revocation hearing and did not attempt to show that prejudice resulted from the delay, he failed to show that his revocation must be set aside. (2) Because the 2014 amendments to Miss. Code Ann. § 47-7-37 are silent on retroactive application and specify time limits that had already passed for Easterling, the amended statute was not to be applied retroactively to Easterling. Therefore, the Court of Appeals affirmed the decision of the Simpson County Circuit Court.

Affirmed - 2015-CP-01388-COA (Nov. 14, 2017)

En Banc Opinion by Judge Fair

Hon. Richard W. McKenzie (Simpson County Circuit Court)

Pro so for Appellant - Laura Hogan Tedder (Att’y Gen. Office) for Appellee

Briefed by [D. Hunter V. Robertson](#)

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COURT OF APPEALS - CRIMINAL CASES

PRESLEY V. STATE

CRIMINAL - FELONY

APPELLATE REVIEW - PROCEDURE - INDIGENT DEFENDANT - Where counsel for indigent defendants finds no arguable issues in the record to present on appeal, counsel shall follow the procedure set forth by the Supreme Court in *Lindsey*

APPELLATE REVIEW - EVIDENCE - JURY - The jury is the sole judge of the credibility of witnesses and the weight and worth of their testimony

FACTS

Spencer Presley was convicted of burglary of an automobile in Tunica County and sentenced as a nonviolent habitual offender to seven years in custody of the Mississippi Department of Corrections without eligibility for parole. The trial court also ordered Presley to pay a \$5,000 fine. Presley appealed. Finding no arguable issues, Presley's counsel filed a *Lindsey* brief.

ISSUES

Whether (1) the trial court erred in convicting and sentencing Presley; and (2) the appellate counsel complied with the proper procedure in reviewing an indigent defendant's case with no arguable issues.

HOLDING

(1) Because the record contained sufficient evidence to support the jury's finding that Presley was guilty of the charged offense of auto burglary, the trial court did not err in its conviction and sentencing. (2) Because the appellate counsel diligently searched the history of the criminal action in good faith and found no arguable appellate issues in his case, the appellate counsel complied with the Supreme Court's holding in *Lindsey*. Therefore, the Court of Appeals affirmed the judgment of the Tunica County Circuit Court.

Affirmed - 2016-KA-01535-COA (Nov. 14, 2017)

Opinion by Judge Carlton

Hon. Albert B. Smith III (Tunica County Circuit Court)

George T. Holmes (Pub. Def. Office) for Appellant - Lisa L. Blount (Att'y Gen. Office) for Appellee

Briefed by [Caroline Loveless](#)

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MISSISSIPPI CASES EDITOR

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