

MISSISSIPPI SUPREME COURT DECISIONS – OCTOBER 27, 2016

SUPREME COURT - CIVIL CASES

CHANDLER V. MCKEE

CIVIL - OTHER

ELECTION LAW - JUDICIAL REVIEW - PETITION - Miss. Code. Ann. § 23-15-927 provides that a petition for judicial review of an election contest must be filed within ten days after any contest or complaint has been filed with an executive committee

LEGISLATION - STATUTORY INTERPRETATION - APPROPRIATE REVIEW - When a statute is plain and unambiguous, it is inappropriate for a court to engage in statutory interpretation, which is used only if the statute is ambiguous or is silent on a specific issue

LEGISLATION - STATUTORY INTERPRETATION - LEGISLATIVE INTENT - Legislative intent is the controlling feature of statutory interpretation and its key component is the actual text of the statute

LEGISLATION - STATUTORY INTERPRETATION - REENACTMENT - If the legislature reenacts a statute without material change then the court's interpretation of the statute becomes a part of the statute, but if the legislature materially alters the statute it does not adopt the court's prior interpretations of the statute

FACTS

Joe Chandler defeated Floyd McKee in a primary election. McKee filed an election contest and the executive committee ruled in favor of Chandler. McKee then filed a petition for judicial review more than ten days after he filed his initial election contest with the executive committee. Chandler filed a motion to dismiss based on untimely filing, but the trial court denied the motion. Chandler filed an interlocutory appeal.

ISSUE

Whether the trial court erred in denying Chandler's motion to dismiss McKee's petition for judicial review as untimely.

HOLDING

Because judicial statutory interpretation was improper due to the statute's plain and unambiguous text and because the legislature's material change in the statute's reenactment negated the court's prior interpretations, McKee did not comply with the ten-day filing requirement for his petition for judicial review. Therefore, the Supreme Court reversed and remanded the order of the Clay County Circuit Court.

Reversed & Remanded - 2016-IA-00587-SCT (Oct. 27, 2016)

Opinion by Chief Justice Waller

Hon. Betty W. Sanders (Clay County Circuit Court)

Walter H. Zinn, JR. for Appellant - William T. Cooper & Elizabeth F. Jones for Appellee

Briefed by [Jonathan Barnes](#)

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MISSISSIPPI DEPARTMENT OF REVENUE V. AT&T

CIVIL - UNCONSTITUTIONAL STATUTE

LEGISLATION - UNCONSTITUTIONAL STATUTE - COMPLETE AUTO TEST - For a state tax statute to be constitutional: (1) the tax must be applied to an activity with a substantial nexus with the taxing state; (2) the tax must be fairly apportioned; (3) the tax must not discriminate against interstate commerce; and (4) the tax must be fairly related to the services provided by the state

LEGISLATION - UNCONSTITUTIONAL STATUTE - DORMANT COMMERCE CLAUSE - While the Clause is framed as a positive grant of power to Congress, the United States Supreme Court has consistently held this language to contain a further, negative command, known as the dormant Commerce Clause, prohibiting certain state taxation even when Congress has failed to legislate on the subject; in its negative aspect, the Commerce Clause prohibits economic protectionism—that is, regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitor

LEGISLATION - UNCONSTITUTIONAL STATUTE - INTERNAL CONSISTENCY TEST -The United States Supreme Court addresses any threat of malapportionment by asking whether the tax is internally consistent and, if so, whether it is externally consistent as well; the test simply looks to the structure of the tax at issue to see whether its identical application by every State in the Union would place interstate commerce at a disadvantage as compared with intrastate commerce

LEGISLATION - UNCONSTITUTIONAL STATUTE - FAILURE OF INTERNAL CONSISTENCY TEST - A failure of internal consistency shows as a matter of law that a State is attempting to take more than its fair share of taxes from the interstate transaction, since allowing such tax in one State would place interstate commerce at the mercy of those remaining States that might impose an identical tax

FACTS

On June 11, 2003, the then-Mississippi State Tax Commission, now the Mississippi Department of Revenue, assessed against AT&T \$11,755,044 in additional income tax, penalties, and interest based on adjustments to AT&T's original income tax returns for the tax years December 1997 through December 1999. AT&T appealed this assessment to the Tax Commission Board of Review, the full Tax Commission, and then to the Chancery Court of the First Judicial District of Hinds County. At the trial court, AT&T claimed that Mississippi Code Section 27-7-15(4)(i) “establishes a discriminatory method of taxation” which violates the Commerce Clause, and the Due Process and Equal Protection Clauses of the United State Constitution.

AT&T argued that the tax scheme “improperly favors taxpayers owning subsidiaries doing business in Mississippi by excluding from the taxpayer’s gross income dividend income received from such subsidiaries, while denying such an exemption for dividends received from subsidiaries which do not conduct business in Mississippi.” On June 23, 2014, the trial court analyzed the constitutionality of Section 27-7-15(4)(i) pursuant to the four-prong test for evaluating the constitutionality of state tax statutes, laid out in *Complete Auto Transit, Inc. v. Brady*. The trial court ultimately granted summary judgment to AT&T and invalidated Section 27-7-15(4)(i). The Department of Revenue filed notice of appeal on April 8, 2015.

ISSUE

Whether Mississippi Code Section 27-7-15(4)(i) violates the dormant aspect of the Commerce Clause of the United States Constitution.

HOLDING

Because Section 27-7-15(4)(i) fails the internal consistency test, the dispositive test for the second prong of the *Complete Auto* test, it violated the dormant aspect of the Commerce Clause and was unconstitutional. While Mississippi offers a dividend exclusion to nexus subsidiaries of AT&T, non-nexus subsidiaries of AT&T do not receive such an exemption. This leads to a tax burden on AT&T that is disparate because, with regard to AT&T's non-nexus subsidiaries, AT&T bears an additional burden from which its nexus subsidiaries are exempt. This indicates a failure of the internal consistency test. Therefore, the trial court’s judgment was affirmed.

Affirmed -2015-CA-00600-SCT (10/27/2016)

Opinion by Justice Kitchens

Hon. William H. Singletary (Chancery Court of the First Judicial District of Hinds County)

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STATE V. MURPHY

Civil – Real Property

CIVIL PROCEDURE - JURY INSTRUCTION - JURY CONDUCT - Generally speaking, Mississippi law presumes that jurors follow the trial judge’s instructions, as upon their oaths they are obliged to do

CIVIL PROCEDURE - AWARDS - ADDITUR - There are no fixed standards as to when an additur or remittitur is proper; a remittitur is appropriate when either (1) the jury or trier of fact was influenced by bias, prejudice, or passion, or (2) the damages were contrary to the overwhelming weight of the evidence; the bias, prejudice or passion standard is purely a circumstantial standard

LEGISLATION - STATUTORY INTERPRETATION - PLAIN MEANING - If the words of a statute are clear and unambiguous, the Court applies the plain meaning of the statute and refrains from using principles of statutory construction

CIVIL PROCEDURE - CAUSE OF ACTION – ACCRUAL - A cause of action accrues only when it comes into existence as an enforceable action; that is, when the right to sue becomes vested

FACTS

This litigation arose from a dispute between brothers Ray, Audie, and Ken Murphy (“the Murphys”), and the State of Mississippi and City of Bay St. Louis over the ownership of beachfront property located within the City. The property is bounded to the west by Beach Boulevard (formerly Front Street) and to the east by the Bay of St. Louis, generally speaking. The exact eastern boundary of the property is the subject of the litigation. The Murphys built a restaurant on the property, which was subsequently destroyed and never rebuilt after Hurricane Katrina. On April 6, 2011, the State executed a rent exempt Public Trust Tidelands lease to the City for approximately forty-four acres of property east/seaward of the Old Seawall for the purpose of building a municipal harbor. The portion of the Murphys’ property that allegedly extends east of the Old Seawall was included in the property leased to the City. The lease names the State as the owner and lessor of the property. On January 3, 2012, the City began construction of the harbor. The State also argued that the Murphys cannot bring a claim because they never challenged the public trust tidelands boundaries. Tidelands are defined as “those lands which are daily covered and uncovered by water by the action of the tides, up to the mean line of the ordinary high tides.” The trial court denied the State’s motion. In August of 2014, a jury found the State liable for taking and damaging the Murphy property. The State appealed.

ISSUES

Whether (1) the Murphys’ claims fail as a matter of law because all property east of the Old Seawall is public trust tidelands; (2) the Murphys’ claims are time-barred; (3) the trial court erred in admitting expert testimony on damages that deviated from the “before and after rule;” (4) the jury’s award against the State was against the overwhelming weight of the evidence or was the result of bias, prejudice, and passion, requiring either a new trial or a remittitur; and (5) the trial court erred in awarding attorneys’ fees, expenses, and interest against the State.

HOLDING

(1) While the State offered some evidence of artificial re-nourishment in some areas of Bay St. Louis, it offered no evidence proving conclusively that artificial re-nourishment had occurred on the property in question. Additionally, the Final Map appears to support the Murphys’ position that the public tidelands boundary adjacent to their property was not the Old Seawall. (2) The Murphys did not have an enforceable cause of action for inverse condemnation until their property was actually taken by the State and the City for the purpose of constructing the municipal harbor. Thus, the State’s statute-of-limitations argument is without merit. (3) Where the State has exercised its power to impose an additional public use on property already set aside for public purpose, the injury to riparian or littoral licenses is not a

taking of private property for which compensation must be made. Therefore, the trial court correctly instructed the jury that it could not consider the loss of littoral rights in calculating just compensation for the taking if it found that those rights were revoked for the greater public good. (4) (a) While the evidence was conflicting, the Court found that the weight of the evidence supports the jury's finding that the Murphys owned the property in question. (b) Because there was no evidence in the record supporting the State's argument that the jury's verdict was inflamed or influenced by the presentation of the City's deemed admissions, the State was not prejudiced by the admission of the City's deemed discovery admissions. (c) Because there is no evidence in the record indicating that the City could have constructed the harbor without the State first exercising a claim of ownership over the property, the jury acted reasonably in assessing the full amount of damages to the State without and prejudice or bias towards the State. (5) Because the unambiguous language of Section 43-37-9 authorizes the award of attorney's fees and expenses in the instant case, the State was not entitled to a remittitur. Therefore the Supreme Court affirmed the judgment of the Hancock County Circuit Court.

Affirmed - 2015-CA-00598-SCT - (Oct. 27, 2016)

En Banc Opinion by Chief Justice Waller

Hon. Lisa P. Dodson (Hancock County Circuit Court)

Hugh D. Keating, Je'nell B. Blum, Jonathan P. Dyal, K.C. Hightower, Lee Davis Thames, Jr. (Att'y Gen. Office) for Appellant - Paul R. Scott, Robert E. Quimby for Appellees

Briefed by [Daniel E. Smith](#)

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SUPREME COURT - CRIMINAL CASES

BELL V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - JURY INSTRUCTIONS - DEADLOCKED JURY INSTRUCTIONS - If a trial judge uses language other than that found in *Edlin* or *Sharplin* which may have a coercive effect on a deadlocked jury, the jury instructions will be impermissible and be reversible

CRIMINAL PROCEDURE - INEFFECTIVE ASSISTANCE OF COUNSEL - BURDEN OF PROOF - Under *Puckett v. State*, to succeed on an ineffective-assistance-of-counsel claim, the defendant must show that (1) his counsel's performance was deficient, and (2) that this deficiency prejudiced his defense

APPELLATE PROCEDURE - INEFFECTIVE ASSISTANCE OF COUNSEL - MOOTNESS - If the case on appeal is reversed on other grounds, the ineffectiveness claim will become moot

FACTS

On November 14, 2012, Donald Bell went into a bank and attempted an armed robbery, demanding \$2,500 from the teller. He was still standing at the teller's window when the police arrived and he was taken to the sheriff's office, where he voluntarily provided a written confession. Bell contended that his liver-transplant antirejection medication caused him to not have the requisite intent for the crime. He also claimed he didn't remember anything from the day of the crime, including giving the confession. At trial, the jury could not come to a unanimous decision, so the judge directed the jury to go back for further deliberations and get the last three people to come join the other nine jurors and reach a unanimous decision. Bell was sentenced by unanimous decision to five years in prison. Bell appealed.

ISSUES

Whether (1) the trial court erred in its comments to a deadlocked jury and whether (2) Bell received ineffective assistance of counsel.

HOLDING

(1) Because the judge's comments to the jurors before sending them back to deliberation could be interpreted as improperly coercive and designed to produce a verdict, it was reversible error to say such impermissibly suggestive

comments. (2) Because the case was reversed on other grounds, the ineffectiveness issue was rendered moot. Therefore, the Supreme Court reversed and remanded the judgment of the Quitman County Circuit Court.

Reversed and Remanded - 2015-KA-00643-SCT (Oct. 27, 2016)

Opinion by Presiding Justice Randolph

Hon. Kenneth L. Thomas (Quitman County Circuit Court)

Phillip Broadhead & George T. Holmes (Pub. Def. Office) for Appellant - Alicia Marie Ainsworth (Att’y Gen. Office) for Appellee

Briefed by [Tony Sax](#)

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MOODY V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - JURY INSTRUCTION - PRESUMPTIVE INSTRUCTION - The United States Supreme Court has held emphatically that presumptive instructions violate the Due Process Clause in that presumptive instructions shift the burden of proof to the defendant on an essential element of the charged offense

CRIMINAL PROCEDURE - JURY INSTRUCTION - PRESUMPTIVE INSTRUCTION - The United States Supreme Court in *Francis* stated that, where a presumptive instruction is given, general instructions as to the prosecutor’s burden and the defendant’s presumption of innocence do not dissipate the error

FACTS

Brodrick Moody was found guilty of possession of a cell phone while confined in a correctional facility and was sentenced to serve ten years, to run consecutively to the sentence he was serving. The trial court instructed the jury as follows: “a person who is charged with the crime of possession of a cell phone in a correctional facility is presumed to be in constructive possession of a cellphone that is found unless that presumption is overcome by competent evidence.” Moody appealed.

ISSUES

Whether the trial court erred in granting jury instruction S-4.

HOLDING

Because the jury instruction relieved the prosecution of its burden of persuasion and improperly shifted the burden to Moody to provide proof that he was not in constructive possession of the cell phone, the trial court erred in granting jury instruction S-4. Therefore, the Supreme Court reversed and remanded the judgment of the Leake County Circuit Court.

Reversed & Remanded - 2015-KA-00562-SCT (Oct 27, 2016)

Opinion by Presiding Justice Randolph

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

Edmund J. Phillips, Jr. for Appellant - Jeffrey A. Klingfuss (Att’y Gen. Office) for Appellee

Briefed by [Zachary Roberson](#)

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WELLS V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - SENTENCING - STATUTORY MAXIMUMS - MISS. CODE. ANN. § 41-29-139 (Rev. 2014) lessened the maximum prison sentence to eight years for possession of less than two grams of cocaine with intent to distribute

CRIMINAL PROCEDURE - SENTENCING - AMENDED STATUTES - MISS. CODE. ANN. § 99-39-5(2) (Rev. 2015) requires the trial court to sentence an offender under a sentencing statute in place at the time of the crime

GOVERNMENTS - COURTS - JUDICIAL PRECEDENT - Previous case law that misinterpreted Miss. Code Ann. § 99-19-1 (Rev. 2015) was overruled to the extent it required a sentencing court to apply a newer sentencing statute instead of the sentencing scheme in effect when a crime was committed

GOVERNMENTS - COURTS - JUDICIAL PRECEDENT - The Mississippi Supreme Court may be able to overrule its own cases, but absent a showing beyond a reasonable doubt that a statute is unconstitutional, it may not overrule statutes

FACTS

In 2007, Larry Wells was indicted for possession of 0.04 grams of cocaine with the intent to distribute. In 2009, when Wells was convicted and sentenced, the potential prison time for that offense, irrespective of amount, was no more than thirty years. Wells was sentenced to a total of sixty years because he was a habitual offender and subsequent drug offender. The statute for possession of cocaine with the intent to distribute was amended in 2014 to lesser sentence of eight years for possession of less than two grams of cocaine. During Wells' first appeal in 2015, the Mississippi Supreme Court affirmed the conviction but remanded the case strictly to determine whether an advanced sentence should be given for the subsequent drug offender conviction. On remand, the circuit court lessened Wells' subsequent drug offender charge and resented him to thirty years in prison under the previous statute. Wells appealed contending that the trial court's refusal to sentence him under the 2014 amended version of the statute, which became effective before his resentencing, was erroneous.

ISSUE

Whether the trial court erred in refusing to sentence Wells under the 2014 amended version of the statute for possession of cocaine with intent to distribute.

HOLDING

The statutory amendment occurred several years after the commission of the crime and after Well's initial sentencing the trial court did not err in refusing to sentence Wells under the 2014 amended version of the statute. Therefore, the Supreme Court of Mississippi affirmed the judgment of the Harrison County Circuit Court.

Affirmed - 2015-KA-01483-SCT (Oct. 27, 2016)

Opinion by Justice Kitchens

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

Hunter Nolan Aikens & George T. Holms (Pub. Def. Office) for Appellant - Abbie Eason Koonce (Att'y Gen. Office) for Appellee

Briefed by [Kaitlyn McMellon](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – OCTOBER 25, 2016

COURT OF APPEALS - CIVIL CASES

BARKER V. STATE

CIVIL - POSTCONVICTION RELIEF

CRIMINAL PROCEDURE - ILLEGAL SENTENCE - AMENDMENT OF INDICTMENT - Uniform Rule of Circuit and County Practice 7.09 provides that Amendment to an indictment shall be allowed only if the defendant is afforded a fair opportunity to present a defense and is not unfairly surprised

CRIMINAL PROCEDURE - INEFFECTIVE ASSISTANCE OF COUNSEL - STRICKLAND - In order to prevail on a claim of ineffective assistance of counsel, a plaintiff must show: (1) that his counsel's representation fell below an objective standard of reasonableness; and (2) that but for counsel's errors, there is a reasonable probability that the outcome of the proceeding would have been different

FACTS

After Cardios Barker was convicted and sentenced, he filed a postconviction relief motion where he claimed: (1) his sentence amounted to an illegal sentence because he was not indicted as a habitual offender, and (2) his attorney was ineffective for failing to object to the circuit court sentencing him as a habitual offender absent a grand jury indictment. The Lowndes County Circuit Court denied Barker's motion without a hearing. Barker appealed.

ISSUE

Whether the circuit court erred in denying Barker's motion for postconviction relief.

HOLDING

Because Barker's claims that he received an illegal sentence and ineffective assistance of counsel were without merit, Barker's motion for postconviction relief was properly dismissed. Therefore, the Court of Appeals affirmed the judgment of the Lowndes County Circuit Court.

Affirmed - 2015-CP-00917-COA (Oct. 25, 2016)

Opinion by Chief Judge Lee

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

Pro se for Appellant - Barbara Wakeland Byrd (Att'y Gen. Office) for Appellee

Briefed by [Kyle Hansen](#)

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FREDENBURG V. STATE

CIVIL - POST-CONVICTION RELIEF

CRIMINAL PROCEDURE - POST-CONVICTION RELIEF - INEFFECTIVE ASSISTANCE OF COUNSEL - In order to prevail on a claim of ineffective assistance of counsel, a petitioner must demonstrate two things: (1) that his counsel's representation fell below an objective standard of reasonableness; and (2) that but for counsel's errors, there is a reasonable probability that the outcome of the proceeding would have been different

CRIMINAL PROCEDURE - POST-CONVICTION RELIEF - STATUTE OF LIMITATIONS - Mississippi Code Annotated § 99-39-5(2) provides that in the case of guilty plea, a motion for relief under shall be made within three (3) years after entry of the judgment of conviction

FACTS

Phillip Fredenburg pleaded guilty to armed robbery. Fredenburg affirmed under oath that his defense counsel had explained to him all of the facts and circumstances of the offense charged and discussed any potential defenses. Fredenburg also swore that he had read and understood his plea petition. The transcript of the plea hearing reflects that the State recited into the record the underlying facts it would prove to support an armed-robbery conviction in the event Fredenburg elected to proceed to trial. Fredenburg testified that he did not disagree with the State's factual basis. The trial court determined that Fredenburg entered his plea freely, intelligently, and voluntarily, and sentenced Fredenburg to serve twenty years in the custody of the MDOC, with five years suspended. Nearly seven years after pleading guilty to armed robbery, Fredenburg filed a PCR motion. The trial court summarily denied the PCR motion. Fredenburg appealed.

ISSUE

Whether the trial court erred in denying Fredenburg's motion for postconviction relief.

HOLDING

Because Fredenburg's claims were time-barred pursuant to Mississippi Code Annotated § 99-39-5(2), and since Fredenburg did not sufficiently allege that his counsel's performance fell below an objective standard of reasonableness or demonstrate a reasonable probability that the outcome of the proceeding would have been different, there was no abuse of discretion in the trial court's denial of Fredenburg's PCR motion. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Circuit Court.

Affirmed - 2015-CP-01072-COA (Oct. 25, 2016)

Opinion by Judge Carlton

Hon. William A. Gowan Jr. (Hinds County Circuit Court)

Pro se - Ladonna C. Holland (Att'y Gen. Office) for Appellee

Briefed by [Lora Wuerdeman](#)

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HENSON V. GRENADA LAKE MED. CENTER

CIVIL - MEDICAL MALPRACTICE

MEDICAL MALPRACTICE - PRIMA FACIE CASE - ELEMENTS - (1) defendant has a duty to conform to a specific standard of conduct to prevent an unreasonable risk of injury; (2) the defendant breached that duty; (3) the defendant's breach is the proximate cause of the plaintiff's injuries; (4) the plaintiff was injured as a result

MEDICAL MALPRACTICE - CAUSATION - EXPERT TESTIMONY - Nurses cannot testify to medical causation because nurses are not qualified to make medical diagnosis or attest to the causes of the illnesses

MEDICAL MALPRACTICE - EXPERT TESTIMONY - ELEMENTS - An expert must articulate: (1) the standard of care that should have been applied in a particular case as an objective standard in order to establish the duty to the patient, and (2) how that standard of care was breached

FACTS

Bonita Henson slipped and fractured her ankle while staying at the Grenada Lake Medical Center ("GLMC"); her wound later developed a staph infection resulting in the amputation of her leg below the knee. She sued GLMC for failure to provide appropriate care, based solely on the testimony of a nurse. The trial court granted summary judgment in favor of GLMC. Henson appealed.

ISSUES

Whether (1) Henson produced competent evidence that GLMC staff breached a duty of care, and that breach is the proximate cause of her injuries; and (2) the medical expert selected by Henson is credible to testify to the causation of her injuries and the proper standard of care allegedly breached.

HOLDING

(1) Because Henson offered no competent evidence that her injuries were causally related to the allegedly negligent care at GLMC, this claim failed as a matter of law. (2) Because the expert produced by Henson was a nurse who cannot testify to the cause of her injuries, nor the proper standard of care allegedly breached, the expert's testimony failed to create a genuine issue of material fact to defeat summary judgment. Therefore, the Court of Appeals affirmed the decision of the Grenada County Circuit Court.

Affirmed - 2015-CA-00973-COA (Oct. 25, 2016)

Opinion by Judge Wilson
Hon. Joseph H. Loper Jr. (Grenada County Circuit Court)
Carols E. Moore, Tangala L. Hollis, & Darryl Anthony Wilson for Appellants - Robert J. Dambrino III & Ashley N. Lane for Appellee
Briefed by [Meredith Pohl](#)

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HINDS CTY. ECON. DEV. DIST. V. W & G PROPS., LLC

CIVIL - CONTRACT

CONTRACTS - INTERPRETATION - FOUR CORNERS - Courts should first examine the four corners of a contract to determine how to interpret it

CONTRACTS - PAROL EVIDENCE - MINUTES AND RECORDS - Parol evidence is not admissible to show what action a board of supervisors took because the board's minutes are the exclusive evidence of what the board did

CONTRACTS - VALIDITY OF ASSENT - DUTY TO READ - A party may not neglect to become familiar with the terms and conditions of a contract and then later complain of lack of knowledge

FACTS

W&G Properties, LLC ("W&G") entered into a contract with Hinds County Economic Development District ("HCEDD") to purchase land to construct a new operating facility for Magnolia Label Co. Inc. ("Magnolia Label"). After executing the agreement, W&G discovered that there was no power and no sewer lines on the property, which delayed construction. W&G and Magnolia Label sued seeking damages for breach of contract. The trial court held that the contract had been breached and awarded damages. HCEDD appealed.

ISSUES

Whether the trial court erred in (1) concluding that HCEDD breached a contract with W&G and Magnolia Label and (2) awarding damages to W&G and Magnolia Label for the alleged breach of contract.

HOLDING

(1) Because the promise that a sewer line and power line would be on-site was not found within the four corners of the agreement, HCEDD did not breach the contract. (2) Because HCEDD did not breach the agreement, the trial court erred in awarding damages to W&G and Magnolia Label. Therefore, the Court of Appeals reversed the judgment of the Hinds County Circuit Court.

Reversed & Rendered - 2013-CA-00817-COA (Oct. 25, 2016)

Opinion by Judge James
Hon. Winston L. Kidd (Hinds County Circuit Court)
J. Lawson Hester & Jason Edward Dare for Appellant - Judson Morgan Lee & Henry Tobias Coleman for Appellees
Briefed by [Catherine Norton](#)

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JONES V. STATE

CIVIL - POSTCONVICTION RELIEF

POST-CONVICTION RELIEF - STANDARD OF REVIEW - DISMISSAL - When reviewing a dismissal of a PCR motion, the court will not disturb a circuit court's factual findings unless such findings were clearly erroneous

CONSTITUTIONAL RIGHTS - PROCEDURAL BAR - STATUTORY EXCEPTIONS - Errors affecting fundamental constitutional rights are excepted from the procedural bars

POST-CONVICTION RELIEF - TIME-BAR - EXCEPTION FOR CONSTITUTIONAL RIGHTS - The mere suggestion of a constitutional-right violation is not itself sufficient to surmount the time-bar; there must at least appear to be some basis for the truth of the claim before the limitation period will be waived

PLEA - PLAIN-ERROR DOCTRINE - JUDICIAL PROCEEDINGS - For the plain-error doctrine to apply, there must have been an error that resulted in a manifest miscarriage of justice or seriously affects the fairness, integrity, or public reputation of judicial proceedings

FACTS

In March 2011, Keif Jones, a convicted felon and habitual offender, was indicted for unlawful possession of a firearm. On August 16, 2011, Jones filed a petition to plead guilty, and eight days later was sentenced to ten years in prison without parole. On September 24, 2011, Jones filed a PCR motion, but the circuit court found Jones's claims to be without merit, and, ultimately, dismissed the PCR motion as time-barred. Jones claimed that the record lacked documents and submitted a written statement of proposed corrections for the record. The circuit-court clerk responded and stated Jones' requested documents were considered discovery which is not part of the court record. Jones appealed.

ISSUES

Whether the Circuit Court of Winston County erred in dismissing Keif Jones's motion PCR motion and whether Jones was denied the right to a meaningful appeal.

HOLDING

Because the indictment was not defective, the Circuit Court did not error when it accepted Jones' plea. Jones' trial counsel's failure to object to the indictment was not deficient and counsel did not provide ineffective counsel. Because Jones can't claim that his plea was involuntary for the first time on appeal, his claim was procedurally barred. Because Jones's record contained a factual basis for his conviction and because discovery documents are not required to be in the record, Jones was not denied the right to a meaningful appeal because of omissions in the record. Therefore, the Court of Appeals affirmed the judgment of the Circuit Court of Winston County dismissing the motion for postconviction relief.

Affirmed - 2015-CP-01544-COA (Oct. 25, 2016)

Opinion by Chief Judge Lee

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

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

Briefed by [Desire'e Martinelli](#)

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KINNEY V. STATE

CIVIL - POSTCONVICTION RELIEF

POST-CONVICTION RELIEF - PROCEDURAL BAR - STATUTE OF LIMITATIONS - 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 - PROCEDURAL BAR - EXCEPTIONS - Errors affecting fundamental constitutional rights are excepted from the procedural bar

CRIMINAL PROCEDURE - ENTRY OF PLEAS - ALFORD PLEA - In *North Carolina v. Alford*, the United States Supreme Court found no constitutional error in accepting a guilty plea despite a protestation of innocence when the defendant knowingly and intelligently concluded that his best interest required entry of the guilty plea, and the trial court made a determination on the record that there was strong evidence of guilt

FACTS

Pursuant to an *Alford* plea, Richard Kinney was found guilty of lustful touching of a child. Kinney was sentenced to fifteen years in prison, with all fifteen years suspended and five years of post-release supervision, and was required to register as a sex offender. Kinney violated his probation by failing to register as a sex offender and failing to notify his probation officer of a change of address and change of employment. Kinney's probation was revoked, and he was ordered to serve the fifteen years in prison. Kinney filed a post-conviction relief motion, which the Lauderdale County Circuit Court dismissed because the motion was procedurally barred. Kinney appealed.

ISSUE

Whether the trial court erred in dismissing Kinney's post-conviction relief motion.

HOLDING

Because Kinney did not file his post-conviction relief motion within three years, his claim was procedurally barred. Because Kinney entered an *Alford* plea, his argument that the trial court's acceptance of his guilty plea violated his due-process and equal-protection rights was substantially contradicted by the record and could not overcome the procedural bar. Therefore, the Court of Appeals affirmed the dismissal of Kinney's post-conviction relief motion by the Lauderdale County Circuit Court.

Affirmed - 2015-CP-00942-COA (Oct. 25, 2016)

Opinion by Presiding Judge Ishee

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

Pro se for Appellant - Alicia Marie Ainsworth (Att'y Gen. Office) for Appellee

Briefed by [Mallory Bland](#)

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MISSISSIPPI DEPARTMENT OF EMPLOYMENT SECURITY V. MATTHEWS

CIVIL - STATE BOARDS AND AGENCIES

ADMINISTRATIVE LAW - STATE AGENCIES - APPEALS - Miss. Code Ann. § 71-5-519 provides that a claimant has fourteen days to appeal to the Board from the decision of the Administrative Law Judge

ADMINISTRATIVE LAW - APPEALS - JUDICIAL REVIEW - In order to avoid the statutory deadline to appeal, the claimant must show "good cause," such as by showing that mailing the Administrative Law Judge's decision to the claimant's "last known address was not reasonably calculated, under all circumstances to apprise the claimant of the decision"

FACTS

Arders Matthews was a cook at Harlow's Casino in Greenville from July 2014 to January 2015, when he was terminated pursuant to the Casino's attendance policy. Matthews sought unemployment benefits, but a Mississippi Department of Employment Security (MDES) claims examiner denied his claim after determining that he had been discharged due to misconduct. Matthews filed an appeal, and the Administrative Law Judge (ALJ) affirmed the claims examiner's decision on March 17, 2015. Matthews had fourteen calendar days in which to appeal the ALJ's decision. Matthews attempted to appeal the decision; however, he waited forty-four days after the ALJ rendered a decision. Therefore, the reviewing Board dismissed Matthew's appeal as untimely. Matthews filed a *pro se* appeal in circuit court, and the circuit court reversed the Board. MDES appealed.

ISSUE

Whether the circuit court erred in reversing the Board's decision.

HOLDING

Because the Board's decision was supported by substantial evidence, it was affirmed. Therefore, the Court of Appeals reversed and rendered the judgment of the Washington County Circuit Court.

Reversed & Rendered - 2015-CC-01422-COA (Oct. 10, 2016)

Opinion by Judge Wilson

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

Albert B. White & Anna Crain Clemmer for Appellant - *Pro se* for Appellee

Briefed by [TreMarcus Rosemon](#)

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MONROE V. STATE

CIVIL - POSTCONVICTION RELIEF

CIVIL PROCEDURE - APPEALS - WAIVER - Failure to raise an issue in the circuit court operates as a waiver and renders that issue procedurally barred on appeal, except as related to errors affecting fundamental rights

CRIMINAL PROCEDURE - SENTENCING - TRUSTY-TIME ALLOWANCE - Miss. Code Ann. § 47-5-138.1 only applies to time earned during incarceration as a trusty, and not to Post Release Supervision reductions

CRIMINAL PROCEDURE - SENTENCING - TRUSTY-TIME ALLOWANCE - An offender in trusty status as defined by the Department of Corrections may be awarded a trusty-time allowance of thirty (30) days' reduction of sentence for each thirty (30) days of participation during any calendar month in an approved program while in trusty status

CRIMINAL PROCEDURE - SENTENCING - APPEAL - Sentencing is within the complete discretion of the trial court and not subject to appellate review if it is within the limits prescribed by statute

FACTS

Monroe pleaded guilty to the manufacturing of more than one kilogram of marijuana and sentenced to twenty years in custody of the MDOC, with six years to serve and five years of supervised post-release supervision. Monroe subsequently filed a PCR motion arguing ineffective assistance of counsel for failure to introduce evidence that may have mitigated his sentence. The PCR motion was dismissed. Monroe appealed.

ISSUES

Whether (1) Monroe's claim is procedurally barred and (2) Monroe's sentence should be reduced or his probation modified under the trusty-time-allowance provision of the Miss. Code Ann. § 47-5-138.1.

HOLDING

(1) Because Monroe failed to raise his sentence modification claim in the trial court, Monroe was procedurally barred from raising the claim on appeal. (2) Monroe presents no evidence that he was not given the sentence reduction under the trusty-time allowance. Despite Monroe's argument that the trusty-time allowance should apply to his post-release supervision, the statute only applies to time earned during incarceration as a trusty, and not to post-release supervision reductions. Therefore, the Court of Appeals affirmed the Madison County Circuit Court's judgment.

Affirmed - 2015-CA-01040-COA (Oct. 25, 2016)

Opinion by Presiding Judge Ishee

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

William S. Mullenix & Percy Stanfield for Appellant - Ladonna C. Holland (Att'y Gen. Office) for Appellee

Briefed by [Blake Brookshire](#)

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PUTNAM V. STATE

CIVIL - POST-CONVICTION RELIEF

POSTCONVICTION RELIEF - EVIDENCE - SUFFICIENCY- If an offender pleads guilty, an offender waives a claim that there was insufficient evidence to find him guilty

POSTCONVICTION RELIEF - FUNDAMENTAL RIGHTS - PROCEDURAL BAR - The Mississippi Supreme Court has not held that an ineffective-assistance-of-counsel claim invokes a ‘fundamental right’ that circumvents all procedural bars that apply to PCR petitions

PROCEDURAL BAR - FUNDAMENTAL RIGHT - MERE ASSERTION INSUFFICIENT - Although errors affecting fundamental constitutional rights are excepted from the procedural bars of the UPCCRA, merely asserting a constitutional-right violation is insufficient to overcome the procedural bars

FACTS

Putnam pleaded guilty to armed robbery, unlawful possession of a firearm, and embezzlement on December 18, 1997. Putnam admitted that he entered Eckerd Drugs, pulled out a gun on the pharmacist, and while Putnam did not rob the store, he admitted that he had the intent to rob it when he entered. Putnam argued in his first post-conviction relief (“PCR”) motion that he received ineffective assistance of counsel and that the indictment was invalid. On appeal, the Court of Appeals affirmed the denial of the first PCR motion. On May 8, 2012, the Putnam filed the current PCR motion which challenged his armed-robbery conviction and sentence. The Harrison County Circuit Court denied the PCR motion, finding it time-barred, a successive-writ, and without merit. Putnam appealed.

ISSUE

Whether (1) Putnam’s claims for ineffective assistance of counsel was a meritorious claim (2) Putnam’s illegal sentence was a meritorious claim and (3) the trial court erred in finding these claims procedurally barred.

HOLDING

(1) Because it was not necessary for Putnam’s counsel to advise of an unnecessary element that would not have affected the trial’s outcome, the ineffective assistance of counsel claim lacked merit. (2) Because Putnam’s guilty plea supports his armed robbery conviction, the illegal sentence argument lacked merit. (3) Because Putnam’s claims did not affect a fundamental constitutional right, they were procedurally barred and the trial court correctly denied Putnam’s PCR motion. Therefore, the Court of Appeals affirmed the judgment of the Harrison County Circuit Court.

Affirmed-2015-CP-00830-COA (Oct. 25, 2016)

Opinion by Judge Carlton

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

Pro se for Appellant - Abbie Eason Koonce (Att’y Gen. Office) for Appellee

Briefed by [Victoria Jones](#)

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ROARK V. STATE

CIVIL - POSTCONVICTION RELIEF

POSTCONVICTION RELIEF - PROBATION REVOCATION - DISMISSAL - A circuit court may dismiss a motion for postconviction relief where it plainly appears from the face of the motion, any annexed exhibits, and the prior proceedings in the case that the movant is not entitled to any relief

POSTCONVICTION RELIEF - PROBATION REVOCATION - REVERSAL - An appellate court will not reverse a circuit court’s dismissal of a petition for postconviction relief unless the circuit court’s decision was clearly erroneous

FACTS

After Jerry Roark violated the terms of his probation, his probation was revoked. Roark filed a motion for postconviction relief, asserting his probation was wrongfully revoked, but the circuit court dismissed his claim. Roark appealed.

ISSUE

Whether the circuit court erred in dismissing Roark's motion for postconviction relief.

HOLDING

Because the record supported the circuit court's finding of a probation violation, Roark's motion for postconviction relief was properly dismissed. Therefore, the Court of Appeals affirmed the judgment of the Rankin County Circuit Court.

Affirmed - 2015-CA-01201-COA (Oct. 25, 2016)

Opinion by Judge Ishee

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

Kevin Dale Camp & Joel Charles Reynolds Jr. for Appellant - Alicia Marie Ainsworth & Jason L. Davis (Att'y Gen. Office) for Appellee

Briefed by [Alison Guider](#)

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SONI V. DHALIWAL

CIVIL - CONTRACT

CIVIL PROCEDURE - JUDGMENT - SUMMARY JUDGMENT - Summary judgment shall be granted if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law

CIVIL PROCEDURE - MOTION FOR RECONSIDERATION - STANDARD OF REVIEW - Denial of a M.R.C.P. 59(e) motion for reconsideration is reviewed under an abuse-of-discretion standard

CIVIL PROCEDURE - MOTION TO DISMISS - STANDARD OF REVIEW - A motion to dismiss is proper where there is no set of facts that would afford relief to the opposing party

FACTS

Beginning on May 12, 2012, and continuing over the next few months, Soni made several trips to negotiate buying Dhaliwal's convenience store in Canton, Mississippi. Some of these negotiations involved Singh, a partial owner of the store. On October 27, 2012, Soni, Dhaliwal, and Singh signed a sale agreement purporting to sell the store for \$1,160,000; Soni gave a \$115,000 deposit. On November 9, 2012, Soni and Dhaliwal entered into a memorandum to lease that provided for a five-year lease of the store at \$6,600 per month due to Dhaliwal, with an optional three-year renewal of the term at \$6,800 per month. After signing, Soni learned that Patel's \$1,300,000 valuation of the store was incorrect, with an actual valuation between \$700,000-\$850,000. On November 15, 2012 Soni met with Patel and Dhaliwal and demanded his deposit on the sale agreement be refunded, but was informed that the money had already been spent. Soni alleged Patel told him that he could buy the store for \$1,160,000 or lease the store instead. Soni then signed the 2012 lease and bill of sale. On August 28, 2013, Soni signed a notarized agreement letter to withdrawal any and all claims against Dhaliwal and Singh. Later in October 2013, Soni signed an additional release and indemnity agreement before a notary, releasing Dhaliwal from any further payment, damages, claims, obligations, or warranties relating to the store. On November 21, 2013, Dhaliwal sent Soni a notice that he was terminating the month-to-month tenancy. On December 19, 2013, Soni entered into a new lease with Dhaliwal for a sixty-month term. On May 1, 2014, Soni filed suit in chancery court, alleging ten counts against Dhaliwal, Sign, and Patel, and \$750,000 in damages. After the case was transferred to circuit court, Dhaliwal and Singh joined in a motion for summary judgment. The circuit court granted the motion, and Soni's motion for reconsideration was denied. Additionally, Patel filed a motion to dismiss under M.R.C.P. 12(b) that was subsequently granted by the circuit court. Soni appealed.

ISSUES

Whether the court erred (1) in granting Dhaliwal and Singh's motion for summary judgment, (2) denying Soni's motion for reconsideration as to the grant of summary judgment, and (3) granting of Patel's motion to dismiss.

HOLDING

(1) Because Soni continued to release Dhaliwal and Singh from liability, the circuit court properly granted summary judgment as to Soni's claims against Dhaliwal and Singh. (2) The circuit court properly denied Soni's motion for reconsideration of the grant of summary judgment as there was no indication that the circuit court judge abused his discretion in denying Soni's motion. (3) Finally, taking the allegations of the pleadings as true, there were no facts to support Soni's claims of fraud, defamation, or breach of fiduciary duties by Patel. Therefore, the Court of Appeals affirmed the judgment of the Madison County Circuit Court.

Affirmed - 2015-CA-01168-COA (Oct. 25, 2016)

Opinion by Judge James

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

Macy Derald Hanson for Appellants – Gene D. Berry & Michael MacInnis for Appellees

Briefed by [Amber Kipfmiller](#)

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