

MISSISSIPPI SUPREME COURT DECISIONS – MARCH 24, 2016

SUPREME COURT - CIVIL CASES

CITY OF GULFPORT V. DEDEAUX UTIL. CO.

CIVIL - EMINENT DOMAIN

PROPERTY - EMINENT DOMAIN - VALUATION - For privately owned, public-utility companies property is valued based on its value at the time the petition was filed including the worth of all the extensions, additions, and improvements of the property which are reasonably necessary

EMINENT DOMAIN - INTEREST PAYMENT - PAYMENT PERIOD - Pursuant to Miss. Code. §11-27-19, legal interest on a jury's award shall only be provided from the date of the filing of the complaint until the payment is actually made

EMINENT DOMAIN - PAYMENT - INTEREST RATE - Pursuant to Miss. Code. §75-17-7, all eminent domain payments shall bear interest at a per annum rate set by the judge hearing the complaint from a date determined by such judge to be fair

FACTS

Dedeaux Utilities Company (“Dedeaux”), a privately owned, public utility company, possessed a Certificate of Public Convenience and Necessity from the Mississippi Public Service Commission to provide certain water and sewer services within a 2.6 square mile of Harrison County. In 1994, the City of Gulfport annexed that area, and in 1996, filed a complaint of eminent domain against Dedeaux in the Harrison County Special Court of Eminent Domain. The court granted Gulfport the right to condemn such utility districts and incorporate them into its municipal system. However, Dedeaux continued to operate the utility for the next eight years, as Gulfport did not take the utility until 2004, when a jury awarded Dedeaux \$3,634,757. Dedeaux appealed the verdict, and Gulfport cross-appealed. On appeal, the court reversed and remanded the case for new trial. After trying the case a second time, the second jury awarded Dedeaux \$5,131,676. Again, Dedeaux appealed the verdict and Gulfport cross-appealed. The court again reversed and remanded the case for a new trial and the parties tried the case for a third time. A third jury awarded Dedeaux a total of \$8,063,981 for the taking. Gulfport Appealed. Dedeaux cross-appealed.

ISSUES

Whether the trial court erred in (1) requiring the parties to use different dates for valuing the assets existing on the date the petition was filed and the valuing the assets added between the date the petition was filed and the date the utility system was actually transferred to the city, (2) limiting the setoff to which the city is entitled to the revenues produced by the assets added after the date the petition was filed, (3) requiring the city to pay interest on the amount of the jury award pertaining to the value of the assets existing on the date the petition was filed from the date of filing the petition instead of the date of taking actual possession, (4) requiring the city to pay interest at the rate of eight percent per annum and (5) refusing to grant a new trial based on the jury's compromise verdict.

HOLDING

(1) Because the court's previous opinion supports a multiple valuation date method and the use of two valuation dates makes determining the amount of setoff much easier and allows the interest to be more easily calculated, the trial court used the proper valuation method. (2) Because in the previous appeal settled the issue of how to treat the added assets, the trial court's interpretation was affirmed. (3) Because the two-date accrual method was consistent with the Court's previous decision, the trial court did not err. (4) Because the trial judge mistakenly thought he had no discretion and

set a statutorily mandated rate, he erred and should have set a reasonable interest rate. (5) Because Gulfport presented no evidence that the jurors agreed beforehand to engage in a compromise verdict, there was no error. Therefore, the Supreme Court affirmed in part and reversed in part the judgment of the Harrison County Special Court of Eminent Domain.

Affirmed In Part, Reversed In Part & Remanded - 2014-CA-00556-SCT (Mar. 24, 2016)

Opinion by Justice Lamar

Hon. William R. Barnett (Harrison County Special Court of Eminent Domain)

Gary White & Jeffrey S. Bruni for Appellant - Joseph W. Gill, Harry R. Allen, & Peter C. Abide for Appellee

Briefed by [Nash Gilmore](#)

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HATCHER V. 2625 BELVEDERE DR. HOLDING, LLC

APPELLATE PROCEDURE - MOTION TO RECUSE

APPELLATE PROCEDURE - DENIAL OF A MOTION TO RECUSE - RULE 48(B)- A true copy of any order entered by the subject judge on the question of recusal and transcript of any hearing thereon shall be submitted with the petition to recuse in the M.R.A.P. Rule 48(B)

APPELLATE PROCEDURE - DENIAL OF A MOTION TO RECUSE - TIME TO FILE - If a judge of the circuit, chancery, or county court shall deny a motion seeking the trial judge's recusal, or if within 30 days following the filing of the motion for recusal the judge has not ruled, the filing party may within 14 days following the judge's ruling, or 14 days following the expiration of the 30 days allowed for ruling, seek review of the judge's action by the M.R.A.P. Rule 48(B)

FACTS

On Oct. 29, 2015, a panel issued a show-cause notice asking Lattaria Hatcher to show cause as to whether her appeal of the trial judge's denial of her motion to recuse should be converted to a motion under M.R.A.P. 48(B). Hatcher responded claiming that the matter should continue as a direct appeal under M.R.A.P. 4. Hatcher then filed a motion to consolidate her case with five related appeals. The Supreme Court took up the question of whether her appeal could proceed on its own motion.

ISSUE

Whether the trial court's denial of Hatcher's motion to recuse could be appealed under either M.R.A.P. 48(B) or M.R.A.P. 4.

HOLDING

The Supreme Court found that the matter failed as a Rule 4 appeal for lack of an appealable judgement. The Court also found that the matter failed to comply Rule 48B's requirement that a copy of the trial judge's order be submitted along with the motion to recuse. Therefore, the Court ordered the appeal to be dismissed.

DISSENT

Justice Kitchens objected to the Court's order, reasoning that the Court had before it everything required by Rule 48B for review of the denial of the motion to recuse. Although Hatcher's filing was incorrectly styled and did not include the trial judge's order, it was filed within the fourteen-deadline required under Rule 48B. Therefore, Justice Kitchens advocated that he would suspend the requirements of Rule 48B and review the trial judge's denial of Hatcher's motion to recuse.

Dismissed - 2015-CA-01161 (Mar. 18, 2016)

En Banc Order – Objection by Justice James W. Kitchens

Briefed by [William H. Holley](#)

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SWINDOL v. AURORA FLIGHT AND SCIENCES CORP.

CIVIL -FEDERALLY CERTIFIED QUESTION

EMPLOYMENT & LABOR -EMPLOYMENT-AT-WILL -TERMINATION - Absent an employment contract expressly providing to the contrary, 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 & LABOR - TERMINATION - PROHIBITION - It is an employer's duty not to thwart the public interest by terminating employees, and an employer may not fire an at-will employee for any reason contrary to prohibitions contained in federal or state law

JUDICIAL INTERPRETATION - STATUTE - IN PARI MATERIA - Traditional statutory construction requires that a statute receive such construction as will, if possible, make all its parts harmonize with each other, and render them consistent with its scope and object

FACTS

Robert Swindol worked for Aurora Flight Sciences Corp. (Aurora). He parked his car in Aurora's parking lot with a firearm locked inside. Aurora's manager's learned about the firearm and fired Swindol later the same day for violating a company policy forbidding firearms on company property. Swindol sued Aurora in United States District Court in Mississippi. He brought state-law claims for wrongful discharge and defamation. Aurora moved to dismiss Swindol's complaint under Rule 12(b)(6). The district court granted the motion, dismissing Swindol's wrongful discharge claim with prejudice and his defamation claim without prejudice. Swindol appealed. The Fifth Circuit began its discussion by noting Miss. Code § 45-9-55(1), which provides: (1) Except as otherwise provided in subsection (2) of this section, a public or private employer may not establish, maintain, or enforce any policy or rule that has the effect of prohibiting a person from transporting or storing a firearm in a locked vehicle in any parking lot, parking garage, or other designated parking area. Swindol argued before the Fifth Circuit that it should interpret § 45-9-55 to create a separate and additional public policy exception to the at-will doctrine because doing so would fortify Mississippi's public policy supporting the right to bear arms. But the Fifth Circuit ultimately declined to do so, noting that it had discovered no Mississippi case law addressing the effect of § 45-9-55. The Fifth Circuit recognized that the Mississippi statute went beyond just giving rights to employees, because it was express that an employer may not enforce a policy prohibiting from having weapons in their locked vehicles. The Fifth Circuit identified the issue as whether that prohibition is sufficient to create an exception to the Mississippi employment-at-will doctrine and also whether § 45-9-55(5) barred the suit, because there were no state law authorities to guide in deciding how the statute affects the employment-at-will doctrine. The Mississippi Supreme Court accepted the federally certified question.

ISSUE

Whether (1) the prohibition in Miss. Code § 45-9-55 establishes an exception to Mississippi's employment-at-will doctrine; (2) Miss. Code § 45-9-55(5) shields Aurora from liability.

HOLDING

(1) An employee is wrongfully discharged if terminated for an act specifically allowed by Mississippi law, the prohibition of which is specifically disallowed by statutory law, and the Mississippi Legislature independently declared via Miss. Code § 45-9-55 that terminating an employee for having a firearm inside his locked vehicle is legally impermissible. (2) There is no harmony in interpreting a statute that, on the one hand, specifically precludes employers from prohibiting firearms inside locked vehicles on their premises, but then, on the other hand, grants employers complete immunity from damages for any violation of that prohibition.

Certified Questions Answered - 2015-FC-01317-SCT (March 24, 2106)

En Banc Opinion by Justice Lamar

David O. Butts, Jr. for Appellant - Stephen William Robinson, Nicholas Delvecchio Sanfilippo, & R. Bradley Best for Appellee

Briefed by [Peter H. Liddell](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – MARCH 22, 2016

COURT OF APPEALS - CIVIL CASES

COOPER V. HIGGINS

CIVIL - CUSTODY

STANDARD OF REVIEW - CHILD CUSTODY CASES - MANIFESTLY WRONG - The standard of review in child custody cases is limited; reversal occurs only if a chancellor is manifestly wrong or applied an erroneous legal standard; the court will not reverse a chancery court's factual findings if there is substantial supporting evidence in the record

CHILD CUSTODY - MODIFICATION TEST - MATERIAL & ADVERSE CHANGE - The test for modification of child custody is (1) whether there has been a material change in circumstances that adversely affects the welfare of the child, and (2) whether the best interest of the child requires a change of custody

CHILD CUSTODY - BURDEN OF PROOF - NON-CUSTODIAL PARENT - The non-custodial parent has the burden of proving that a material change that adversely affects the child has occurred in the custodial home since the decree or order sought to be modified

FACTS

Langston is the son of Jeremy Todd Cooper and Laquita Necolle Higgins. According to Higgins, Langston has post-developmental disorder, a disorder on the autism spectrum. In 2004, a Michigan court awarded Higgins sole custody of Langston. In 2008, Cooper filed a petition to modify custody in the Coahoma County Chancery Court, which was subsequently denied by a prior chancellor. In 2013, Cooper filed a second petition to modify custody. The chancellor denied the petition and Cooper appealed. However, the court reporter resigned from the case, and replacement court reporters were unable to locate the original transcription notes or tapes. The Supreme Court remanded the case for the chancellor to determine whether a suitable transcript could be reproduced, or, alternatively, to hold a new trial. Because a suitable transcript could not be reproduced, a new trial was ordered. On remand, Cooper filed a new pro se petition to modify custody. During Cooper's examination of Higgins at trial, he established that she had lived at her present residence for approximately five years, that both her biological father and her stepfather raised her, and that she collects books. Cooper then announced that he had no further questions. When Cooper took the stand, he accused Higgins of acts of violence and of interfering with his visitation in 2005 and 2006. Higgins moved to dismiss the petition to modify custody on the ground that Cooper failed to prove a material change in circumstances. The court granted the motion and dismissed the petition on that ground. Cooper appealed.

ISSUE

Whether the chancellor erred in denying Cooper's petition to modify custody.

HOLDING

Because nothing in the record indicates a material and adverse change in circumstances since the denial of Cooper's 2008 petition to modify custody, the chancellor did not err in denying Cooper's petition to modify custody. Therefore, the Court of Appeals affirmed the judgment of the Coahoma County Chancery Court.

Affirmed - 2015-CP-00361-COA (Mar. 22, 2016)

Opinion by Judge Wilson

Hon. Catherine Farris-Carter (Coahoma County Chancery Court)

Pro se for Appellant - Patricia Ann Booker for Appellee

Briefed by [Shayna Giles](#)

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MEISNER V. STATE

CIVIL – POST-CONVICTION RELIEF

CIVIL PROCEDURE - POST-CONVICTION RELIEF - STANDARD OF REVIEW - The court will not disturb the trial court's factual findings unless they are found to be clearly erroneous

SENTENCING - HABITUAL OFFENDER - MAXIMUM SENTENCE REQUIREMENT - While the habitual-offender-enhancement statute requires the circuit judge to impose the maximum sentence for habitual offenders, a circuit judge may impose a reduced sentence when the sentence would not be proportional to the crime

CIVIL PROCEDURE - POST-CONVICTION RELIEF - EVIDENTIARY HEARING - An evidentiary hearing is not necessary where the allegations in a PCR motion are specific and conclusory and the trial court is not required to grant an evidentiary hearing on every petition it entertains

FACTS

In April 2010, Tommy Meisner led the police on a car chase and collided with a law-enforcement patrol vehicle. Upon searing Meisner's vehicle, the police discovered the contents of a methamphetamine laboratory and it was later determined he was transporting the laboratory from one location to another. Meisner pleaded guilty to possession of precursor chemicals or drugs as a habitual offender. Meisner was sentenced to ten years, to be served day-for-day. The circuit judge mentioned, on the record, the question of proportionality in determining that a reduced sentence was in order. In 2014, Meisner filed a PCR motion challenging the habitual-offender enhancement to his sentence and claiming that a proper proportionality analysis was not completed rendering his sentence illegal. Further, Meisner argued that his guilty plea was not valid because the sentence was illegal. Meisner requested a hearing on his PCR motion. The circuit judge denied the request for a hearing as well as the PCR motion. Meisner appealed.

ISSUES

Whether (1) Mr. Meisner's sentence was illegal due to the State's invalid sentencing recommendation and the circuit court's failure to conduct a proper proportionality analysis during sentencing, (2) Mr. Meisner's guilty plea was invalid because of the illegality of the sentencing recommendation and (3) the court erred in failing to fully analyze the arguments presented in his PCR motion and by failing to grant the PCR motion.

HOLDING

(1) Because the circuit judge was vested with the authority to issue a reduced sentence, the State did not recommend an illegal sentence during plea bargaining. (2) As such, Meisner did not enter an invalid guilty plea. (3) Because in the eight-page order denying Meisner's PCR motion the judge made clear that she reviewed the record, the pleadings and all other evidence, the circuit judge did not err in failing to hold a hearing or in failing to grant the PCR motion. Therefore, the Mississippi Court of Appeals affirmed the judgment of the Harrison County Circuit Court.

Affirmed - 2014-CP-00619-COA (Mar. 22, 2016)

Opinion by Judge Ishee

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

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

Briefed by [Darlan Etienne](#)

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WILLIAMS V. STATE

CIVIL - POST-CONVICTION RELIEF

CRIMINAL PROCEDURE - POST-CONVICTION RELIEF - PROCEDURAL BAR - Claims which the prisoner failed to object to and that were “capable of determination” at the time of sentencing are procedurally barred
CRIMINAL PROCEDURE - SENTENCING - LEGALITY OF SENTENCING - A sentence is not illegal unless it exceeds the maximum statutory penalty for the crime
CRIMINAL PROCEDURE - POST-CONVICTION RELIEF - SUCCESSIVE PCR MOTIONS - A claim which is not raised in a PCR proceeding is procedurally barred from being raised in a successive PCR motion

FACTS

Dillion Williams pled guilty to charges of burglary and aggravated assault. Before accepting his guilty plea, the court informed Williams of his right to a trial by jury, that burglary carried a twenty-five-year sentence of imprisonment which could be enhanced to fifty years, and that the aggravated assault carried a twenty-year sentence which could be enhanced to forty years. The court then accepted the plea and after later hearing testimony from the victim and three of her relatives, entered a total sentence of sixty-five years’ imprisonment for the burglary and the enhanced aggravated assault to run consecutively. Williams voiced no objection to the sentence or the procedures under which it was assigned. He subsequently filed a Post-Conviction Relief (“PCR”) motion in 2012 which was dismissed, another PCR motion in 2013 which was dismissed, and a third PCR motion in November 2013. In his third PCR motion, Williams alleged for the first time that his sentence was illegal because a jury was not impaneled to find that his conviction for aggravated assault was subject to a sentencing enhancement, as required in Miss. Code Ann. § 99-19-355. The Marshall County Circuit Court denied Williams’s motion, finding that it was procedurally barred as a second or successive PCR motion and because Williams’s claim could have been raised at the time of sentencing. Williams appealed.

ISSUE

Whether the trial court erred by dismissing Williams’s motion for Post-Conviction Relief because it was procedurally barred.

HOLDING

Because Williams’s claim, under Miss. Code Ann. § 99-19-355, was “capable of determination” at the time of his sentencing, and his failure to raise the issue at that time precluded him from raising the issue in a PCR motion, there was no error in dismissing the PCR motion. Therefore the judgment of the Marshall County Circuit Court was affirmed.

DISSENT

Judge James would find that the circuit court lacked jurisdiction to enhance the sentence or the charge of aggravated assault, making the forty-year sentence illegal. He argued that since the right to be free from an illegal sentence imposed by a court lacking jurisdiction to impose the sentence is a fundamental right, there was an exception to the procedural bar. Therefore, Judge James would reverse and remand the matter for a sentencing hearing to be conducted before a jury only for the aggravated assault charge.

Affirmed - 2014-CA-01170-COA (Mar. 23, 2016)

En Banc Opinion by Judge Wilson - Dissent by Judge James

Hon. Robert William Elliott (Marshall County Circuit Court)

David G. Hill & Tiffany Leigh Kilpatrick for Appellant - Jeffrey A. Kingfuss (Att’y Gen. Office) for Appellee

Briefed by [Robert T. Noland](#)

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COURT OF APPEALS - CRIMINAL CASES

WILSON V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - JURY INSTRUCTIONS - IMPROPER INSTRUCTIONS -If jury instructions fairly announce the law of the case and effectuate no injustice, no reversible error will be found

CRIMINAL PROCEDURE - INEFFECTIVE ASSISTANCE OF COUNSEL - PREJUDICE - To show prejudice, the claimant must show that, but for his attorney's errors, there is a reasonable probability that the result would have been different

CRIMINAL PROCEDURE - RETROACTIVE APPLICATION - STATUTORY AMENDMENT - No statutory change of any law affecting a crime or its punishment or the collection of a penalty shall affect or defeat the prosecution of any crime committed prior to its enactment

FACTS

Timothy Wilson was arrested for taking a utility trailer without permission. At trial Wilson presented two alibi witnesses, neither of whom claimed to have been with him at the time the trailer was taken. Wilson also failed to submit a proposed alibi instruction. Therefore, the judge gave Instruction S-3, an alibi instruction that informed the jury, among other things, that the State was not required to disprove an alibi. The circuit judge gave that instruction and Instruction S-4, a prima facie evidence instruction. A jury convicted Wilson of receiving stolen property and the trial judge sentenced him, as a habitual offender, to serve ten years in the custody of the MDOC and ordered him to pay a \$10,000 fine. Wilson appealed.

ISSUES

Whether (1) the circuit court properly instructed the jury, (2) Wilson's trial counsel was ineffective due to failure to propose alibi instruction and failure to object to the S-4 instruction, and (3) Wilson's sentence is illegal because he was sentenced under the law in effect at the time of his offense, rather than the law as amended.

HOLDING

(1) Because neither Instruction S-3 nor the absence of a different alibi instruction prevented the jury from considering the testimony and determining whether Wilson had an alibi, and because Instruction S-4 would not have confused the jury there were other instructions given instructing the jury on the elements that the State had to prove in this case, the issue was without merit. (2) Because Wilson failed to show that his trial counsel was constitutionally ineffective for failing to request an alibi instruction or that he suffered any prejudice as a result and because he cannot show that there is a "reasonable probability" that the S-4 instruction altered the result of the proceeding, his ineffective assistance claim also failed. (3) Because the legislature did not give specific guidelines that House Bill 585 would be applied retroactively, the court concluded that retroactive application was not intended. Therefore, the Mississippi Court of Appeals affirmed the judgment of the Warren County Circuit Court.

CONCURRENCE/DISSENT

Judge Irving agreed with the majority opinion on all issues except issue III. He believes that Wilson should have been sentenced according to the amended statute which was not in effect when the property was stolen but was in effect when Wilson was sentenced. Judge Irving argues that applying the lesser sentence would not require retroactive application of the amendments to the elements of the offense because the amended statute only requires a range of value within which the value use by the court fell.

Affirmed - 2014-KA-01478-COA (Mar. 22, 2016)

En Banc Opinion by Judge Wilson- Concurrence & Dissent in Part by Judge Irving

Hon. Judge Isadore W. Patrick Jr. (Warren County Circuit Court)

George T. Holmes (State Public Def. Office) for Appellant - Alicia Marie Ainsworth (Att'y Gen. Office) for Appellee

Briefed by [Rod Hickman](#)

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