

Dear Subscribers,

This week's Brief*Serv* Newsletter, Exam Edition is below.

Thank you again for your continued support of the *Mississippi Law Journal*. Due to our commitment to our studies during this two-week exam period, the Exam Edition of Brief*Serv* contains only summaries of the cases. The case summaries are longer and more detailed than the summaries that generally appear in the email. The enhanced case summaries are intended to balance our needs in preparing for exams and your needs as a subscriber. The full Brief*Serv* Newsletters will begin again next Sunday, December 17.

Supreme Court – Civil

Pollan v. Wartak - Wrongful Death – Statute of Limitations – Discovery – On October 8, 2008, Shirley Pollan was admitted to North Mississippi Medical Center-West Point and treated for low blood sodium levels. Shirley was under the care of Dr. Andrew Wartak. Her medical records show that her blood sodium levels were increased at a rate in excess of existing medical guidelines. Her diagnosis upon discharge indicated she might be suffering from central pontine myelinolysis, or CPM, a brain cell dysfunction that can be caused by a rapid rise in the body's sodium levels. Over the next two years, Shirley experienced numerous behavioral and neurological issues. On August 9, 2010, her primary care physician noted several possible conditions, including the possibility of CPM. On August 24, 2010, a neurology specialist noted that on October 8, 2008, fluids were administered to her too quickly, resulting in her current disabling condition. However, the specialist ultimately decided that Shirley did not have CPM. Shirley died on January 18, 2011, and an autopsy report was issued on July 11, 2011, listing Shirley's cause of death as CPM following rapid sodium correction. Shirley's son, Christopher Pollan, brought an action for wrongful death and other claims against Wartak and others for medical negligence. The trial judge concluded that the statute of limitations began to run on August 24, 2010, and thus the claims were barred by the two-year statute of limitations. The trial court granted summary judgment to defendants. Pollan appealed.

On appeal, Pollan argued that defendants waived the statute of limitations defense and that the statute of limitations did not begin to run on August 24, 2010 because Pollan did not know she had CPM. The Supreme Court found that defendants did not waive their statute of limitations defense because engaging in discovery to develop the defense is not an unjustified delay in pursuing the defense. Further, the statute of limitations began when Pollan knew or should have known that defendants were negligent, not when her medical diagnoses was discovered. Diagnoses of CPM were not required for Pollan to have requisite knowledge of the defendants' negligent acts. Therefore, the Supreme Court affirmed the judgment of the Clay County Circuit Court.

Justice King dissented, arguing that a genuine issue of material fact remains. Justice King argued that Pollan was justified in relying on her doctors' opinions that she did not have CPM. In so relying, a juror may conclude that a reasonable person would not believe the defendants' actions were the cause of her injuries.

Briefed by [Nathan Simpson](#)

Renner v. Retzer Resources, Inc. - Personal Injury – Premises Liability – Destruction of Evidence – On August 13, 2012, John Renner stopped at a McDonald's in Winona, Mississippi while traveling with his family. After placing his order and while retrieving condiments, Renner believed one of the McDonald's employees spoke to him. Renner turned and faced the counter before realizing the employee was speaking to another

customer. As Renner turned back around to return to his table, his left foot struck a protruding leg of a highchair, causing him to fall and suffer injuries to his face and left shoulder. After the fall, Renner heard one of the McDonald's employees ask another what the highchair was doing there, and instructing the employee to move it. Two and a half years later, Renner filed suit against: McDonald's; Retzer Resources, Inc., the owner and operator of the Winona McDonald's; and Velencia Hubbard, the manager of the Winona McDonald's. During discovery, defendants claimed that video footage of the fall no longer existed and no video footage was produced per requests in discovery. Renner testified that he had spoken with a risk management company for McDonald's who acknowledged that McDonald's had provided them with videotapes of the incident and that they would review the tapes to see what happened. Hubbard and Retzer moved for summary judgment, arguing that Renner could not demonstrate the existence of any genuine issue of material fact that: (1) the highchair was a dangerous condition; (2) any alleged danger was hidden; or (3) defendants had actual or constructive knowledge of the alleged dangerous condition. Renner responded to the defendant's motion for summary judgment, arguing that McDonald's was either directly negligent in causing his fall, or McDonald's had actual or constructive knowledge of the alleged dangerous condition. Further, Renner argued that, because of the unfavorable presumption that attaches to evidence spoliation, summary judgment would be inappropriate. On August 2, 2016, the trial court granted summary judgment in favor of Hubbard and Retzer. Renner appealed.

On appeal, Renner raised two issues: (1) whether summary judgment was granted erroneously because Renner had proved each element of his premises-liability claim, and (2) whether the defendants' loss or destruction of key video evidence prohibited the grant of summary judgment. To recover in a trip-and-fall case, a plaintiff must (1) show that some negligent act of the defendant caused his injury; or (2) show that the defendant had actual knowledge of a dangerous condition and failed to warn the plaintiff; or (3) show that the dangerous condition existed for a sufficient amount of time to impute constructive knowledge to the defendant, in that the defendant should have known of the dangerous condition. Because Renner established sufficient facts in order to defeat a motion for summary judgment, it would be a question for the jury whether the defendants had actual knowledge of the alleged dangerous condition and failed to warn Renner, or whether the defendants had constructive knowledge of the alleged dangerous condition. Further, the issue of whether the video evidence was destroyed was not fully developed in discovery. Because triable issues of fact remain, the Mississippi Supreme Court found that the Washington County Circuit Court erroneously granted summary judgment. Therefore, the Supreme Court reversed and remanded the judgment of the Washington County Circuit Court.

Briefed by [Emily Warwick](#)

Supreme Court – Post-Conviction Relief

Supreme Court – Criminal

[Brown v. State](#) - Armed Robbery – Evidence – Witness Testimony – Maurice Brown was indicted on two counts of armed robbery. He and his brother, Jonathan Brown, entered the home of Mattie and Cheramie Moore with a shotgun and stole approximately one hundred dollars. Jonathan Brown testified that this was not what happened and instead claimed that there was a theft, but no gun or threat of violence was used. Brown

was convicted on one of the armed robbery counts in the Hinds County Circuit Court. On appeal, Brown argued that the evidence was insufficient to support his conviction for armed robbery.

The Supreme Court does not reverse a decision where there was a straight issue of fact that was decided by the jury because doing so would invade the province and prerogative of the jury. Testimony of a single uncorroborated witness is enough to sustain a conviction even if there may be more than one person testifying to the contrary. Therefore, the Supreme Court affirmed the judgment of the Hinds County Circuit Court.

Briefed by [Zachary Harper](#)

Johnson v. State - Burglary – Two-Theory Jury Instruction – Due Process Rights – Bobby Hall was assaulted outside of his home by Xavier Jones, who then broke into Hall’s home and stole Hall’s credit cards. Johnson was convicted for burglary of a dwelling, aggravated assault, and conspiracy to commit credit-card fraud. He raised seven issues on appeal. Johnson argued that the “breaking” element of burglary was not met because Hall never closed his door when he went outside. However, use of force against a person to enter their house meets the breaking element. Because Johnson’s case was entirely circumstantial, Johnson claims that the judge abused his discretion by not allowing a two-theory jury instruction. However, because the evidence did not support two different theories, there was no abuse of discretion by refusing a two-theory jury instruction.

Johnson further argued that his counsel was ineffective but provided no evidence to support that claim. He also claimed there were defects with his indictment, but none of his claims rose to the level of plain error. He claimed that he was not given an initial appearance after his arrest and that he was denied an arraignment, but neither of these issues were brought up in trial court and are, therefore, procedurally barred. Finally, Johnson argued that his right to a speedy trial was violated. However, the delay was without prejudice for the prosecution to gather more evidence. Therefore, the Supreme Court affirmed the judgment of the Madison County Circuit Court.

Briefed by [Tyler Alcorn](#)

Supreme Court – Order

Court of Appeals – Civil

Pruitt v. Howard Industries, Inc. - Workers Compensation – Earning Capacity – Whole Body Disability – Robert Pruitt suffered a back injury in the scope of his employment with Howard Industries, Inc. (Howard). Following initial treatment for the injury, Pruitt returned to work on full duty. Pruitt later received a functional capacity examination which assigned a three-percent impairment of the whole body with certain restrictions. As a result, Pruitt was restricted to light-duty work and received accommodations. The next year, Pruitt filed a petition to controvert with the Mississippi Workers Compensation Commission (Commission) alleging he had sustained a compensable injury. Howard admitted that the injury occurred in the scope of Pruitt’s employment,

but it denied that he had suffered any loss of wage-earning capacity as a result. The administrative judge found that Pruitt failed to prove that he had suffered any permanent disability or loss of wage-earning capacity. The decision was affirmed by the Commission. Pruitt appealed, alleging the decision was not supported by substantial evidence.

In a disability determination where the claimant has suffered an injury to the “body-as-a-whole,” the only available measure for computing allowable benefits is the claimant’s overall diminished wage-earning capacity. Additionally, a rebuttable presumption of no loss of wage-earning capacity exists when a claimant returns to his same or similar employment and earns the same or higher wages. This presumption was properly applied by the Commission because Pruitt returned to the same position at Howard following his injury and his wages increased. Further, Pruitt failed to produce sufficient evidence to rebut the presumption. Therefore, the Court of Appeals affirmed the judgment of the Mississippi Workers Compensation Commission.

Briefed by [Marilyn Higdon](#)

Singleton v. Superintendent Jacquelyn Banks - Sentencing – Crediting Time Served – Other Jurisdictions – In May 1984, Daniel Singleton was convicted by a Harrison County Circuit Court jury of attempted armed robbery, and sentenced to thirty-five years in prison. In December 2015, Singleton filed a request through the Mississippi Department of Correction’s Administrative Remedy Program, alleging that he was entitled to 206 days of pretrial credit for time served in a Louisiana jail. MDOC denied Singleton’s request stating that it was untimely. The circuit court affirmed MDOC’s decision, finding that the grievance was untimely, as he “waited over thirty-two years before filing.” Singleton appealed.

Mississippi recognizes an exception to the procedural time-bar where a sentence has expired. Here, because Singleton is arguing that his sentence would have effectively ended if the court agreed with him, the exception to the procedural bar should be afforded. Nonetheless, a defendant is not entitled to credit for time served while incarcerated in another state for a crime committed there, even though there were criminal charges pending in Mississippi. Even assuming that the procedural bar is removed, Singleton’s claim is without merit. Therefore, the Court of Appeals affirmed the judgment of the Green County Circuit Court.

Briefed by [Addison K. Watson](#)

Thibodeaux v. The Humane Society of South Mississippi - Torts – Dog Bite – Dangerous-Propensities – A dog was owned by an individual living at a homeless camp in early 2013. Over the course of a few months, the dog displayed aggressive behavior on multiple occasions and was taken into custody of the Humane Society of South Mississippi twice before being released back to its owner at the homeless camp. At some point, the dog was given to a separate family. In April 2013, Beulah Thibodeaux was bitten by the dog and filed a suit against its new owners. After finding that the dog was previously in the custody of the Humane Society, Thibodeaux amended her complaint to include the Humane Society and the City of Biloxi. The City was eventually dismissed due to Thibodeaux’s failure to properly serve notice under the Mississippi Tort Claims Act. The Humane Society filed a motion for summary judgement, which the trial court granted. Thibodeaux appealed, asserting that the trial court erred in granting summary judgment because (1) the Humane Society owed her a duty of care under the dangerous-propensity rule; and (2) she was a third-party beneficiary to the contract between the Humane Society and the City.

The Court of Appeals held that the Humane Society could not be held liable, as they did not have ownership of the dog at the time it bit Thibodeaux. Although the Humane Society did have ownership of the dog for a brief period with knowledge of its dangerous propensities, the Humane Society was within its rights to release the dog to its original owner, as no animal-control officer had instructed otherwise. Because the agreement

between the Humane Society and the City contained no language reflecting the intent of either party to include anyone else as a beneficiary to the agreement, the contention that Thibodeaux was a third-party beneficiary was without merit. Therefore, the Court of Appeals affirmed the judgment of the Jackson County Circuit Court.

Briefed by [Hale Neilson](#)

Court of Appeals – Post-Conviction Relief

Carbin v. State - Habitual Offender - Successive Writ - Fundamental Right - In 1988, Christopher Carbin pled guilty to three counts of kidnapping, and one count each of armed robbery, jail escape, conspiracy to commit jail escape, aggravated assault, and grand larceny. Due to his prior record, the trial court sentenced Carbin to forty-five years in prison as a habitual offender. In the motion at hand—Carbin’s ninth attempt at post-conviction relief—Carbin argues that the evidence was insufficient to support his sentence as a habitual offender. The trial court determined that Carbin’s motion was time-barred and barred as a successive writ.

A petitioner can only overcome the procedural bars if he shows evidence that his fundamental constitutional rights were affected. At trial, however, Carbin did not object to the admission of certified judgments of conviction and sentence evidencing his prior convictions. Because certified copies of judgments of conviction are sufficient to support habitual-offender status, Carbin failed to overcome the procedural bar. Therefore, the Court of Appeals affirmed the judgment of the Tate County Circuit Court.

Briefed by [Spencer H. Newman](#)

Farr v. State - Guilty Plea – Ineffective Assistance – Lack of Cited Authority – Karen Farr was indicted for one count of murder for deliberately striking Ronnie Perry with her vehicle, causing his death. Farr was also charged with one count of leaving the scene after striking Perry. While on bail, Farr was charged with aggravated assault. On March 6, 2013, Farr entered a guilty plea to the lesser charge of manslaughter, and to the aggravated assault charge of leaving the scene. She was subsequently sentenced. On March 7, 2016, Farr, acting *pro se*, filed a post-conviction relief (PCR) motion, which the circuit court denied. Farr filed a letter on how to proceed to circuit court. Farr’s letter was interpreted as notice of appeal pursuant to Miss. R. App. P. 3(c). On appeal, Farr argued: (1) she did not receive a “Motion of Discovery,” despite repeated requests; (2) she was coerced into pleading guilty; (3) she received ineffective assistance of counsel; (4) law enforcement was negligent in failing to arrest the victim, Ronnie Perry, on several outstanding warrants, which could have prevented his death; (5) Perry’s role as a confidential drug informant for Marshall County law enforcement created a conflict of interest in her case; and (6) the “interests of justice” warrant a reduction in her sentence.

Notwithstanding lack of cited authority for any of the six issues raised on appeal by Farr, the Court of Appeals briefly addressed each claim. The court found that Farr’s first issue lacked merit because a plea of guilt waives any evidentiary issue, thus she was not entitled to discovery. The court found Farr’s second issue lacked merit because the evidence included in the record supported Farr knowingly, intelligently, and voluntarily entered her plea. Additionally, Farr did not present evidentiary support to her coercion argument. The court found Farr’s third issue lacked merit because she had no evidence to suggest her counsel’s conduct proximately resulted in her guilty plea, or that, but for her counsel’s error, she would not have plead guilty. Likewise, Farr signed the plea petition, warranting Farr was satisfied with her lawyer’s assistance. The court found no merit to the remaining three issues, and found that any merit the arguments would have had, it was waived and abandoned when she plead guilty. Therefore, the Court of Appeals affirmed the judgment of the Marshall County Circuit Court.

Briefed by [Charlotte Cooper](#)

[Moore v. State](#) - Ineffective Assistance – Guilty Pleas – Successive Writs – Gregory Moore pled guilty to five counts of auto burglary and one count of burglary of a dwelling in 2013. He was sentenced to fifty years in the custody of the MDOC. The circuit court dismissed his two PCR motions in 2014. In 2016, Moore filed another PCR motion, arguing involuntary guilty pleas and ineffective assistance of counsel. The circuit court dismissed this PCR motion as successive-writ barred. Moore filed a motion for reconsideration or, in the alternative, to clarify the judgment, arguing that his prior PCR motions were prepared and filed by a person engaged in the unauthorized practice of law. The circuit court denied the motion, and Moore appealed.

The Court of Appeals found that Moore's notarized signatures on the 2014 PCR motions constituted prima facie evidence that he did indeed sign and authorize them. Moore's argument that his trial attorney provided ineffective assistance was based on alleged statements regarding parole eligibility. The Court of Appeals concluded that, because Moore failed to offer affidavits supporting his claim other than his own affidavit, an evidentiary hearing was not warranted. The Court of Appeals found Moore's guilty pleas facially correct. As such, there was no basis for an exception to the procedural bar on Moore's successive PCR motion. Therefore, the Court of Appeals affirmed the judgment of the Rankin County Circuit Court.

Judge Carlton dissented, arguing that Moore presented sufficient evidence to warrant an evidentiary hearing on his PCR motion. Judge Carlton would reverse and remand the circuit court's dismissal of Moore's motion.

Briefed by [Allison A. Bruff](#)

[Purvis v. State](#) - Rape – Guilty Plea – Standing – In February 1995, Joseph Purvis was indicted for rape. On March 24, 1995, Purvis was assigned a public defender, arraigned, pleaded not guilty, and an order set trial for June 27, 1995. The case was continued several times. In May 1999, the case was set for trial in June 1999 and a second bench warrant was issued for Purvis in September 2000. Purvis claims that he regularly checked in with his bond company or counsel, but nothing was happening on his case so he eventually stopped checking in. On September 6, 2001, Purvis was arrested and appointed counsel, who advised him that if he pleaded guilty to sexual battery, he could go free immediately. Purvis entered a guilty plea on the same day and received a suspended sentence of seven years, with three years of supervised probation. On April 27, 2016, Purvis filed a PCR motion claiming his guilty plea was invalid and his counsel was ineffective. Purvis contended that when he pleaded guilty to sexual battery he was not told that he would have to register as a sex offender for life. Further, he argued that his counsel did not advise him that the statute of limitations had run on the sexual-battery charge, nor did counsel investigate his case or request any discovery. Simultaneously, Purvis filed a discovery motion for the evidence in the State's file, which he claimed would prove that had his counsel requested the evidence, he would have recommended Purvis reject the plea deal. On June 20, 2016, the trial court entered an order denying and dismissing Purvis's PCR motion. Purvis timely appealed.

The Court of Appeals held that prisoners cannot collaterally attack their convictions if they lack standing. Purvis had no standing before the trial court as he was never incarcerated, and his PCR motion was filed after he had fully served his probation and more than five years after his registration as a sex offender. Therefore, the Court of Appeals affirmed the judgment of the Rankin County Circuit Court.

Briefed by [Mary-Katherine Black](#)

Revette v. State - Guilty Plea - Time Bar - Illegal Sentence - In 1987, Revette pled guilty to one count of rape and one count of sexual battery. The trial court sentenced Revette to life in prison, plus ten years, to run consecutively. In 2017, almost thirty years after his guilty plea, Revette brought a claim for post-conviction relief contesting the legality of his sentence. The trial court dismissed Revette's claim as time-barred and without merit.

On appeal, Revette argues that his claim is exempt from the typical three-year statute of limitations under the "illegal sentence" exception. In support, Revette argues that an amendment to the sentencing guidelines rendered his sentence illegal. However, Revette was sentenced under the 1977 version of the statute, which allowed the death penalty for his crimes. Because Revette's plea actually avoided the harsher available penalty, his sentence was not illegal. Therefore, the Court of Appeals affirmed the judgment of the Scott County Circuit Court.

Briefed by [Spencer H. Newman](#)

Court of Appeals – Criminal

Hartzog v. State - Felon in Possession – Timely Appeal – Supplemental Jury Instructions – Kenneth Hartzog was arrested after officers responded to a call that shots had been fired at the home of Hartzog's girlfriend. Hartzog signed a *Miranda* waiver and agreed to talk to an investigator after he was charged with being a felon in possession of a firearm. Hartzog admitted he obtained the gun from a back bedroom and shot it. Hartzog was convicted by a jury and sentenced to seven years.

On appeal, Hartzog challenged the trial court's decision to deny a proposed jury instruction and the decision to supplement an instruction to the jury during deliberations. The State challenged Hartzog's notice of appeal as untimely. Good cause existed for granting Hartzog additional time to file his notice of appeal and Hartzog's counsel perfected the appeal within the additional time. The jury instructions given, when read as a whole, properly stated the law and required the jury to find that all elements of the offense had been proved before Hartzog could be found guilty. The supplemental instruction only contained language to the effect of proving Hartzog constructively possessed a firearm. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Circuit Court.

Briefed by [Jay Michael Patterson](#)

Malik v. State - Drug Crimes – Post-Trial Motions – *Brady* Motions – Nitin Malik was convicted on two counts of the sale of hydrocodone with acetaminophen, a schedule III controlled substance. He was sentenced to two consecutive eight-year terms. At trial, the State's primary witness was a confidential informant (CI) who testified that she bought the pills from Malik on two separate occasions. The CI wore a recording device for one of these occasions, and the recording was admitted as evidence during trial. After the jury found Malik guilty, he moved for a new trial, asserting that (1) the State failed to provide the defense with exculpatory evidence during discovery, (2) the State made improper closing arguments, (3) the trial court erred in allowing evidence of prior bad acts, and (4) his counsel was ineffective. The Rankin County Circuit Court denied Malik's post-trial motion, and he appealed.

The Court of Appeals found Malik's argument concerning exculpatory evidence to be without merit. The Court of Appeals found that testimonial evidence from the CI about one occasion when she failed to buy pills from

Malik did not meet any of the criteria set forth in *Brady*, mainly because the evidence was not exculpatory in nature. Next, the Court of Appeals found that the State had not made improper closing arguments because the remark was a reasonable inference from testimony given from the CI at trial. Malik further asserted that remarks by the State during closing arguments constituted an evidentiary rule violation as introducing evidence of prior bad acts to prove his guilt on the charges at issue; however, these remarks by the CI and the State prosecution were not being admitted to prove that Malik had sold drugs but rather to bolster the CI's credibility and establish that she had a subjective belief that Malik would provide her with drugs. Lastly, Malik argued that his former lawyer's failure to have a gas station attendant who allegedly witnessed the drug deals testify at Malik's trial prejudiced him and changed the outcome of the trial. The decision, however, fell under trial strategy. Therefore, the Court of Appeals affirmed the judgment of the Rankin County Circuit Court.

Briefed by [Sean Grady](#)

Rasheed v. State - Criminal Procedure – Indictment – Amendments – Akeem Rasheed was indicted for aggravated assault and burglary of a dwelling after kicking down the door of Renee Childs's home and stabbing Michael Randall in the back. At trial, Rasheed admitted to an altercation with Randall but denied stabbing Randall. Following a jury trial, the Oktibbeha County Circuit Court convicted Rasheed of aggravated assault and burglary of a dwelling. Rasheed appealed, taking issue with the trial court's denial of his request for a self-defense instruction, the trial court's instruction to the jury on the elements of aggravated assault, the trial court's failure to declare a mistrial for prosecutorial misconduct, and the assistance he received from his trial counsel.

The judgment of the Oktibbeha County Circuit Court was affirmed because Rasheed denied stabbing Randall, any basis for self-defense was eliminated. Additionally, because Rasheed denied stabbing Randall, an additional burden of proving the assault was "not in necessary self-defense" was not improper and because comments made by the prosecution were proper, and Rasheed's trial attorney failed to contemporaneously object to the comments, the trial court did not err in failing to declare a mistrial. Choosing not to object was within Rasheed's trial counsel's strategic discretion, and his counsel's failure to object did not prejudice Rasheed. As such, the trial counsel's assistance was not ineffective.

Finally, Rasheed raised the issue of whether the prosecution should not have been permitted to amend his indictment to correct an error, namely, that the apartment was Childs's "dwelling," not Randle's dwelling. The Court of Appeals held that the amendment was proper because the amendment was concerning form, not substance. Therefore, the Court of Appeals affirmed the judgment of the Oktibbeha County Circuit Court.

Briefed by [Andrew P. Cicero, III](#)

Walker v. State - Indigent Appellate Practice – Felony Escape – Jury Instructions – In 2008, Marcus Walker was convicted of simple robbery and was sentenced to twenty years in MDOC custody, with fifteen years suspended, and five years in post-release supervision. In 2012, Walker was convicted of a misdemeanor charge, and the circuit court revoked his five-year probation, sentencing him to five years in MDOC custody. While in the custody of the Forrest County Sheriff's Department awaiting transport to an MDOC facility, Walker was assigned to work at a vehicle service center for the Sheriff's department. Walker escaped from the work detail. In a statement to an MDOC investigator, Walker indicated that he walked around the fence, camped out in the woods, and stayed with relatives before he was apprehended in a motel room in Hattiesburg. Walker was convicted of felony escape, and sentenced to an additional five years in MDOC custody. Walker filed a motion for JNOV, which the circuit court denied. Walker then appealed this denial pro se, because the Indigent Appeals Division of the public defender's office, who represented Walker, found no arguable issues for appeal. On appeal, Walker argued: (1) the State has failed to prove every element of felony escape; (2) the jury should have

been instructed on the lesser sentence of misdemeanor escape; and (3) his indictment was defective, as it had expired under Mississippi law.

The Court of Appeals found that Miss. Code Ann. § 97-9-49 did not require the State to prove force or violence for a conviction for felony escape; therefore, the prosecution sufficiently proved felony escape. Because there was no factual basis for the jury instruction of misdemeanor felony, the Court of Appeals found that the circuit court had not abused its discretion in refusing to grant it. Lastly, Miss. Code Ann. § 99-17-1 states that offenses for which indictments have been presented to the court must be tried within 270 days of arraignment. Because only 108 days had passed between Walker's arraignment and trial, the indictment was not defective. Therefore, the Court of Appeals affirmed the judgment of the Forrest County Circuit Court.

Briefed by [Daniel Tankersley](#)

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