

MISSISSIPPI SUPREME COURT DECISIONS – SEPTEMBER 10, 2020**SUPREME COURT - CIVIL CASES****CITY OF PETAL V. GULF S. PIPELINE CO.****CIVIL - MUNICIPAL BOUNDARIES & ANNEXATION**

APPELLATE PROCEDURE - TIMELINESS - CONFLICT OF LAWS - When there is a conflict of laws between a state statute and the rules over an appellate procedure, the rules of appellate procedure control

ANNEXATION - REASONABLENESS - EVIDENCE - Factors within an annexation case must be considered collectively to determine whether, under the totality of the circumstances, the annexation was reasonable

ANNEXATION - REASONABLENESS - REVERSAL - A court will not reverse a chancellor's finding of reasonableness in an annexation case unless that finding is manifestly wrong and/or not supported by substantial and credible evidence

ANNEXATION - REASONABLENESS - PAST PERFORMANCE - Courts evaluate a municipality's performance in previous annexations and whether it has provided promised services to its residents to determine the reasonableness of a proposed annexation

FACTS

On May 6, 2016, the City of Petal ("the City") adopted an ordinance to annex six tracts of land. The City filed its complaint to ratify the ordinance in the Forrest County Chancery Court. The chancery court granted summary judgment to dismiss the annexation of Area 1 and the remaining five areas went to trial. Many parties objected to the City's proposed annexation of Areas 2, 4, 5, and 6. There were no objections concerning Area 3. The City argued that annexation of these areas would benefit residents with municipal-level services. Objectors for Area 2 claimed that the area was an industrial zone and was occupied primarily by companies in the hydrocarbon industry. Expert witnesses testified that annexation of Area 2 would result in severe financial and tax consequences for companies within that area. Objectors for Areas 4, 5, and 6 stated that the areas were so sparsely populated and developed that there was no need for the City's involvement. The chancery court granted the annexation of Areas 3 and 5 to cure property-line errors created during the City's 2003 annexation. The chancery court denied the annexation for Areas 2, 4, and 6, holding that the City was only seeking to increase the amount of taxes it could collect. The City appealed.

ISSUES

Whether (1) the City timely filed its appeal and (2) the trial court erred by denying annexation for Areas 2, 4, and 6.

HOLDING

(1) Because the time to file an appeal in Miss. Code Ann. § 21-1-21 and § 21-1-37 conflicts with Miss. R. App. P. 1, 3-4, and because the City filed its appeal within thirty days, the City timely filed its appeal. (2) Because the twelve reasonableness factors and related subfactors for annexations were extensively covered during trial, and because the chancellor's decision was supported by substantial and credible evidence, the trial court properly excluded Areas 2, 4, and 6 from annexation. Therefore, the Supreme Court affirmed the judgment of the Forrest County Chancery Court.

Affirmed - 2019-AN-00639-SCT (Sept. 10, 2020)

Opinion by Justice Maxwell

Hon. Robert L. Lancaster (Forrest County Chancery Court)

Rocky Wayne Eaton & Jerry A. Evans for Appellant - W. Lucien Smith, Sheldon G. Alston, Christopher M. Howdeshell, William Dement Drinkwater, Michael Patrick Everman, & William L. Smith for Appellees

Briefed by [Greyson Young](#)

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SUPREME COURT - ORDERS

CANNON IMPORT OF VICKSBURG, LLC V. PROVANCE

EN BANC ORDER

ORDER

Cannon Import of Vicksburg, LLC d/b/a Cannon Honda, Cannon Vicksburg, LLC, and Cannon Motor Company, Inc., filed a petition for an Interlocutory Appeal by Permission and a Motion to Stay. The Mississippi Supreme Court, en banc, granted the Petition for Interlocutory Appeal by Permission and the Motion to Stay Pending Interlocutory Review. Furthermore, the Supreme Court granted the Plaintiffs' Motion to Strike Defendants' Rebuttal to Plaintiffs' Opposition to Cannon's Petition for Interlocutory Appeal by Permission, filed by Kyle Provance and Roman Embry.

OBJECTION

Presiding Justice King disagreed with the majority's grant of an interlocutory appeal. Relying and quoting at length the Warren County Circuit Court's findings of fact and conclusions of law, he argued that the majority's actions were inconsistent with Miss. R. App. P. 5(a), and the grant of the interlocutory appeal on this issue was a perversion of the Miss. R. App. P. 5(a). He would have denied the interlocutory appeal and allowed the matter to proceed to the trial court.

Ordered - 2020-M-00529-SCT (Sep. 10, 2020)

En Banc Order by Justice Griffis - Objection by Presiding Justice King

Briefed by [Betsy Lee Montague](#)

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SUPREME COURT - CRIMINAL CASES

ROBINSON V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - COMPETENCY - MENTAL EXAMINATION - Miss. R. Crim. P. 12.2(a) of the provides that "[i]f at any time before or after indictment, the court, on its own motion or the motion of any party, has reasonable grounds to believe that the defendant is mentally incompetent, the court shall order the defendant to submit to a mental examination"

CRIMINAL PROCEDURE - COMPETENCY - JUDICIAL DISCRETION - There is no requirement that a trial judge order a competency hearing; the test is whether the trial judge received information which, objectively considered, should reasonably have raised a doubt about a defendant's competence and alerted him to the possibility that the defendant could not understand the proceedings, appreciate their significance, or rationally aid his attorney in his defense

FACTS

Cynthia Robinson was convicted of conspiracy and possession with intent to distribute hydrocodone after being intercepted by the police on her way to meet a confidential informant. During trial, Robinson moved for a mental evaluation. Her counsel asserted that Robinson was not effectively assisting in her own defense and exhibited symptoms of mental illness, including her prior diagnosis of a drug-induced psychotic disorder and posting YouTube videos

espousing conspiracy theories. The trial court denied the motion and found Robinson guilty of both charges. Robinson appealed.

ISSUE

Whether the trial judge received information which should have reasonably raised a doubt about Robinson's mental state and, as a result, abused his discretion in denying the motion for mental examination.

HOLDING

Because the trial judge and prosecutor observed Robinson for several years, because the trial court had the benefit of a prior mental examination, in which Robinson was found competent to stand trial, and because Robinson's appearance at trial was coherent and internally consistent, the trial judge did not abuse his discretion in denying the motion for a mental examination. Therefore, the Supreme Court affirmed the judgment of the DeSoto County Circuit Court.

DISSENT

Presiding Justice Kitchens argued that the trial judge abused his discretion because he ignored concerns that both Robinson's attorney and the prosecutor voiced and found Robinson was mentally competent based on his prior dealings with Robinson. Further, he argued that both the majority and the trial court mistakenly focused on the consistency of Robinson's current behavior rather than inquiring about her mental state at the time of the initial hearing.

Affirmed - 2019-KA-00740-SCT (Sept. 10, 2020)

Opinion by Justice Ishee - Dissent by Presiding Justice Kitchens

Hon. Gerald W. Chatham Sr. (DeSoto County Circuit Court)

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

Briefed by [Bess Fisher](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – SEPTEMBER 8, 2020

COURT OF APPEALS - CIVIL CASES

NAIL V. WRIGHT

CIVIL - TORTS-OTHER THAN PERSONAL INJURY & PROPERTY DAMAGE

TORTS - LEGAL MALPRACTICE - STATUTE OF LIMITATIONS - The statute of limitations on a legal malpractice action is three years

TORTS - LEGAL MALPRACTICE - DISCOVERY RULE - Under the discovery rule, the statute of limitations begins to run on the date that the plaintiff learns, or through reasonable diligence, should have learned, of the lawyer's negligence

FACTS

Pamela Nail hired attorney William Wright and his law firm in her divorce proceedings from her husband, Steve Nail. In May 2013, Wright sent a letter to opposing counsel addressing Pamela's concern that Steve had not listed all of his financial assets in his Rule 8.05 statement. In September 2013, Steve and Pamela settled for a divorce on the basis of irreconcilable differences. As part of the agreement, Pamela had to file and sign a joint tax return for 2012 with Steve. When Pamela signed the tax return, she noticed that Steve's income was reported to be \$805,088, nearly \$700,000 more than the reported income on his 8.05 form. Despite this, Pamela signed the return declaring that under penalty of perjury she had examined the return and believed it to be true and complete. After Pamela brought this to her attorney's attention, he sent a letter to opposing counsel protesting the income listed on the tax return. After the letter was sent, Pamela fired Wright as her attorney and hired new counsel. After a failed attempt to have her divorce set aside on the basis of fraud, Pamela filed suit against Wright in February 2017 for legal malpractice. Pamela alleged that Wright was negligent in his handling of the case and that his oversights resulted in her not receiving equitable distribution of the

marital assets or a fair permanent monthly alimony award. The trial court found that Pamela had knowledge of the 2012 tax return and therefore knew or should have reasonably known of any alleged negligent conduct in 2013. Since she brought the case over three years after her initial discovery of the alleged fraud, the trial court ruled that her motion was time-barred by the three-year statute of limitations and granted summary judgment in favor of Wright. Pamela appealed.

ISSUE

Whether the trial court erred in granting summary judgment based on the three-year statute of limitations.

HOLDING

Because Pamela affirmatively knew of the harm she alleged against Wright more than three years before she filed a formal complaint, because she testified that when she reviewed the tax return form she immediately called her attorney, and because her discovery of the alleged fraud took place more than three years before she filed suit against Wright, her claims were time barred by the three-year statute of limitations. Therefore, the Court of Appeals affirmed the judgment of the Madison County Circuit Court.

CONCURRENCE IN PART & DISSENT IN PART

Judge Lawrence agreed with the majority's holding that Pamela's legal malpractice claims concerning her divorce and the investigation of her husband's finances during the divorce proceedings were time barred, but argued that the dismissal of Pamela's Miss. R. Civ. P. 60(b) claim should have been reversed and remanded for further proceedings because it was not barred by the statute of limitations. He argued that, since Pamela's Miss. R. Civ. P. 60(b) claim related back to the original complaint pursuant to Miss. R. of Civ. P. 15(c), and the statute of limitations did not start tolling until the six-month time period in which to file a Miss. R. Civ. P. 60(b) claim ended, the complaint was not time barred and therefore should have been reversed and remanded.

Affirmed - 2019-CA-00744-COA (Sept. 8, 2020)

Opinion by Judge McCarty - Concurrence In Part & Dissent In Part by Judge Lawrence

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

Hiawatha Northington II & Paul Snow for Appellant - Alexander Francis Connolly for Appellees

Briefed by [Jacob D. Hamm](#)

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S. CENT. REG'L MED. CTR. V. REGAN

CIVIL - MEDICAL MALPRACTICE

TORTS - MEDICAL MALPRACTICE - PRIMA FACIE CASE - To establish a prima facie case of medical negligence, the plaintiff must show (1) the defendant had a duty to conform to a specific standard of conduct for the protection of others against unreasonable risk of injury; (2) the defendant failed to conform to that required standard; (3) the defendant's breach of duty was a proximate cause of the plaintiff's injury; and (4) the plaintiff was injured as a result

EVIDENCE - MEDICAL MALPRACTICE - EXPERT WITNESS - It is generally not required that an expert testifying in a medical malpractice case be of the same specialty as the doctor about whom the expert is testifying; it is the scope of the witness's knowledge and not the artificial classification by title that should govern the threshold of question admissibility

CIVIL PROCEDURE - AWARDS - ADDITUR - The authority to impose the condition of additur is governed by Miss. Code Ann. § 11-1-55, stating that an additur can be awarded when the court finds either: (1) the jury or trier of fact was influenced by bias, prejudice, or passion or (2) the damages awarded were contrary to the overwhelming weight of credible evidence

FACTS

Joyce Regan was admitted to South Central Regional Medical Center's ("South Central") Radiology Department for an outpatient CT Angiogram ("CTA") scan of her neck with a contrast dye. Doctor David Sullivan, knowing that Regan had an allergy to contrast dye, ordered that she premedicate the night before the scan. Immediately following the completion of the scan, Regan experienced an allergic reaction to the contrast dye that included rigors, shivering, shaking, jerking, and uncontrolled movements of the head, arms, and body. In response to her allergic reaction, Regan was moved to a gurney and given a pillow covered with a blanket, and the gurney bed rails were secured in the upright position to prevent Regan from falling off. Subsequently, Dr. Sullivan was contacted and made the decision to move Regan to the emergency department for further treatment. Regan testified that she remembered striking her head on the gurney multiple times and, as a result, had a terrible headache and her ear hurt on the side of the impact. Regan was transferred out of the radiology department to the emergency department. While in the emergency department, Regan was given a dose of Ativan, which finally relieved her symptoms. The following morning, Regan was taken to Forrest General Hospital due to headaches, slurred speech, and shaking. A CT scan showed a subacute right-side subdural hematoma. Dr. David Yeh, the on-call neurosurgeon, recommended Regan be admitted to the intensive care unit for monitoring. When it was determined that the hematoma was stable, Regan was advised upon discharge that if she had any other symptoms, she needed to return to the emergency room. After being home for ten days, she returned to the Forrest General emergency room complaining of headaches, head pressure, and slurred speech. Dr. Yeh was on-call and, after a CT scan, he found the hematoma had grown and Regan needed surgery. Dr. Yeh testified that it took Regan a full year to recover from the surgery and her family testified that she is no longer able to engage in activities she previously enjoyed. Regan alleged that, as a result of her surgery, the scar tissue causes discomfort when she sleeps. Regan filed a complaint against South Central, alleging medical negligence and seeking punitive damages. Specifically, Regan alleged that South Central, as well as the other defendants that were later dismissed as parties, failed to protect her in both the radiology and emergency departments. The trial court issued a verdict in favor of Regan for \$133,839.42. South Central appealed, and Regan filed a cross appeal.

ISSUES

Whether the trial court erred in (1) finding Dr. Yeh's expert testimony provided sufficient evidence of causation and evidence of the actual point in time the hematoma was sustained; (2) finding Regan's standard of care expert, Ka Russum, to be qualified to testify over South Central's objection; (3) awarding a verdict in favor of Regan in the amount of \$133,839.42; and (4) awarding damages inadequate and contrary to the weight of evidence, requiring an additur

HOLDING

(1) Because Dr. Yeh's testimony unequivocally explained how and when Regan sustained her subdural hematoma, and because he linked Regan's hematoma to her involuntary movements on the gurney while in South Central Regional Medical Center's care, his expert testimony was sufficient. (2) Because Ka Russum's testimony was within the realm of her nursing experience, the trial court did not err by allowing her to testify over South Central's objection. (3) Because of the sufficiency and admissibility of Dr. Yeh's and Russum's testimony, South Central's argument as to the weight of credible evidence was without merit and the trial court did not err in its verdict in favor of Regan in the amount of \$133,839.42. (4) Because the trial court is well versed in the law and the requirements of what a plaintiff must prove in a medical malpractice case and the award of damages, the denial of an additur was within the trial court's discretion. Therefore, the Court of Appeals affirmed the judgment of the Jones County Circuit Court.

Affirmed - 2018-CA-01036 (Sept. 8, 2020)

Opinion by Judge Lawrence

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

Richard O. Burson, Peeler Grayson Lacey Jr., & Benjamin Blue Morgan for Appellant - William T. May, Carroll H. Ingram, & Jennifer Ingram Johnson for Appellee

Briefed by [Rachel Fewell](#)

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SULLIVAN V. SULLIVAN

CIVIL - DOMESTIC RELATIONS

FAMILY LAW - DIVORCE - ALIMONY - Lump sum alimony is a fixed and irrevocable amount that may be used either as alimony or as a part of property division and that may be paid in a lump sum or in fixed periodic installments; lump sum alimony becomes an obligation of the estate of the obligor if he or she dies before payment

FAMILY LAW - DIVORCE - ALIMONY - Deferred distribution is a method of dividing benefits based upon the benefits actually received and not upon a prediction of benefits

FACTS

Wayne and Janice Sullivan married in 1998. At the time, Wayne worked for a community college. After he retired, Wayne began drawing retirement benefits from the Mississippi Public Employee's Retirement System ("PERS"). Wayne and Janice separated in 2014 and both consented to an irreconcilable differences divorce. They submitted all issues related to property division and alimony to the chancellor. The Court of Appeals reversed and remanded the initial property division, and the chancellor again divided the marital property (including PERS retirement benefits) and refused alimony for Janice. Janice then filed a motion to alter or amend the judgment, requesting a lump sum of all future payments from the PERS benefits rather than just a right to receive monthly draws along with Wayne. The chancellor denied her motion in relevant part, reasoning that the PERS benefits constituted a vested retirement income stream, payable when received. The chancellor's judgment granted Janice an equitable percentage of Wayne's PERS benefits for the next twelve years. Janice appealed.

ISSUE

Whether the trial court erred in the property division by awarding Janice a share of Wayne's PERS account that would abate at Wayne's death.

HOLDING

Because payments from Wayne's PERS account were not characterized as lump sum alimony, and because deferred distribution is a permissible way to divide the marital portion of retirement benefits under a defined-benefit plan, such as PERS, the trial court did not err by denying Janice's request for a lump sum determination, and the deferred distribution should not terminate at twelve years but continue as long as Wayne receives PERS benefits. Therefore, the Court of Appeals affirmed as modified the judgment of the Lee County Chancery Court.

Affirmed as Modified - 2019-CA-00418-COA (Sept. 8, 2020)

Opinion by Presiding Judge Wilson

Hon. Jacqueline Estes Mask (Lee County Chancery Court)

Michael Lee Dulaney & John Michael Grant IV for Appellant - Jason D. Herring & Michael Spencer Chapman for Appellee

Consolidated with:

Affirmed as Modified - 2015-CT-01513-COA (Sept. 8, 2020)

Hon. Jacqueline Estes Mask (Lee County Chancery Court)

Michael Lee Dulaney & John Michael Grant IV for Appellant - Jason D. Herring & Michael Spencer Chapman for Appellee

Briefed by [Jack Hall](#)

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TODD V. MCCLAIN, MCCLAIN, MCCLAIN, INC.

CIVIL - PERSONAL INJURY

EVIDENCE - EXPERT TESTIMONY - DAUBERT STANDARD - To determine whether the methodology of an expert witness is reliable, Mississippi applies the *Daubert* standard, which considers: (1) whether the theory or

technique in question can be and has been tested; (2) whether it has been subjected to peer review and publication; (3) its known or potential error rate; (4) the existence and maintenance of standards controlling its operation; and (5) whether it has attracted widespread acceptance within a relevant scientific community

CIVIL PROCEDURE - JURY INSTRUCTIONS - REVERSIBLE ERROR - Defects in specific instructions will not mandate reversal when all of the instructions taken as a whole fairly, although not perfectly, announce the applicable primary rules of law

FACTS

Ben Todd fell in a Sonic Drive-In that McClain, McClain, McClain, Inc. (“McClain”) owned. Todd filed a premises liability action, alleging that the floors were wet and there were no warning signs in the area. At trial, witness disputed these facts. Using a comparative analysis technique, David Johnson, an expert witness for McClain, testified that Todd fell forward a considerable distance, presenting the theory that Todd tripped and fell. During jury instructions, Todd objected to Jury Instruction Number 12, and the instructions were amended. The amended instructions were not objected to and the jury found that McClain was not negligent. Todd appealed.

ISSUES

Whether (1) the circuit court erred by giving Jury Instruction Number 12 and (2) Johnson’s expert witness testimony was reliable.

HOLDING

(1) Because Todd did not object to the amended jury instructions, and because minor defects in jury instructions do not require reversal when the rule of law is presented fairly, the circuit court did not err by giving Jury Instruction Number 12. (2) Because the relevance and admissibility of expert testimony falls under the discretion of the trial court, and because the expert satisfied the *Daubert* standard by using a comparative analysis technique, the testimony was not unreliable and the circuit court did not abuse its discretion by admitting the expert testimony. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Circuit Court.

Affirmed - 2018 CA-01670-COA (Sept. 8, 2020)

Opinion by Judge Greenlee

Hon. Winston L. Kidd (Hinds County Circuit Court, First Judicial Dist.)

Shanda M. Yates for Appellant - Patrick M. Tatum & Steven Cavitt Cookston for Appellee

Briefed by [Kathleen Workman](#)

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WILLIAMS V. STATE

CIVIL - STATE BOARDS & AGENCIES

ADMINISTRATIVE LAW - STATE AGENCIES - STANDARD OF REVIEW - The decision of an administrative agency, such as the Department of Corrections, will not be disturbed unless the decision is unsupported by substantial evidence, is arbitrary or capricious, is beyond the agency’s scope or powers, or is a violation of the party’s constitutional rights

CRIMINAL PROCEDURE - SENTENCING - PAROLE ELIGIBILITY - A person convicted of armed robbery can never be eligible for parole pursuant to Miss. Code Ann. § 47-7-3(1)(c)(ii)

CRIMINAL PROCEDURE - SENTENCING - EARNED-TIME ALLOWANCE - A person convicted of armed robbery cannot accrue trusty-earned time pursuant to Miss. Code Ann. §§ 47-5-138.1(2)(d) and 47-5-139(1)(e)

FACTS

In 2009, Brian Williams pled guilty to armed robbery and aggravated assault. Williams was sentenced to serve thirteen years in the custody of the Mississippi Department of Corrections (“MDOC”) and five years of post-release supervision. Williams later filed a request for relief through the MDOC administrative remedy program, contending that he was eligible for trusty-earned time pursuant to Miss. Code Ann. § 47-5-138.1. The MDOC denied his request, stating that

Williams was prohibited from receiving trusty-earned time based on his armed-robbery conviction. Williams then filed a “Motion for Judicial Review” in the Sunflower County Circuit Court, which found him ineligible for trusty-earned time and dismissed his motion. Williams appealed.

ISSUE

Whether the trial court erred in dismissing Williams’s motion upon finding Williams ineligible for trusty-earned time based on his armed-robbery conviction.

HOLDING

Because Williams was convicted of armed robbery and Miss. Code Ann. § 47-7-3(1)(c)(ii) states that a person convicted of armed robbery can never be eligible for parole, and because a person convicted of armed robbery cannot accrue trusty-earned time pursuant to Miss. Code Ann. §§ 47-5-138.1(2)(d) and 47-5-139(1)(e), the trial court properly found Williams ineligible for trusty-earned time and dismissed his motion for judicial review. Therefore, the Court of Appeals affirmed the judgment of the Sunflower County Circuit Court.

Affirmed - 2019-CP-01652-COA (Sept. 8, 2020)

Opinion by Judge Lawrence

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

Pro se for Appellant - Darrell Clayton Baughn (Att’y Gen. Office) for Appellee

Briefed by [Mckenzie Williamson](#)

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COURT OF APPEALS - POST-CONVICTION RELIEF

HOLIFIELD V. STATE

CIVIL - POST-CONVICTION RELIEF

CONSTITUTIONAL LAW - DOUBLE JEOPARDY - SUCCESSIVE PROSECUTION - To determine whether double jeopardy protections apply, the court determines whether each offense contains an element not present in the other; if not, they are labeled the same offense for double jeopardy purposes, and successive prosecutions and/or punishments are constitutionally barred

CRIMINAL PROCEDURE - INEFFECTIVE ASSISTANCE OF COUNSEL - BURDEN OF PROOF - Under *Strickland*, a claimant of ineffective assistance of counsel bears the burden of proof to show that: (1) counsel’s performance was deficient and (2) the deficiency prejudiced his defense; allegations of ineffective assistance of counsel must be made with specificity and detail and are assessed by the totality of the circumstances

EVIDENCE - OBJECTIONS - PROCEDURAL BAR - A defendant is procedurally barred from asserting an issue on appeal if he fails to object to the statements during trial

FACTS

In 2016, Rickey Lee Holifield was charged in two separate indictments for crimes that occurred in 2015, relating to the possession of marijuana and methamphetamine (“2015 crimes”). In 2017, Holifield was indicted for four crimes that occurred in 2016, which included charges for trafficking methamphetamine, possession of hydrocodone and acetaminophen, possession of marijuana, and possession of alprozalan (“2016 crimes”). On October 3, 2016, Holifield entered a guilty plea for the 2015 crimes, which he had already been indicted on, but not for the 2016 crimes, which he had not been indicted on yet. On August 1, 2017, Holifield was indicted for the 2016 crimes. On October 9, 2017, Holifield pled guilty to the 2016 crimes. In 2018, Holifield filed a post-conviction relief (“PCR”) motion, citing constitutional claims pertaining to due process and double jeopardy, ineffective assistance of counsel, and lack of jurisdiction. The circuit court denied both Holifield’s PCR motion and his motion for reconsideration. Holifield appealed.

ISSUES

Whether (1) Holifield's United States and Mississippi Constitutional rights against double jeopardy were violated; (2) Holifield received ineffective assistance of counsel due to his counsel allowing him to be prosecuted twice for the same crimes; (3) Holifield's rights were violated in the prosecution of the 2015 crimes; and (4) Holifield's argument for waiver concerning the prosecution of the 2016 crimes was valid.

HOLDING

(1) Because the plea transcripts from October 3, 2016, and October 9, 2017, indicated that Holifield pled guilty only to the 2015 crimes on October 3, 2016, and the 2016 crimes on October 9, 2017, and because the 2016 crimes occurred on different dates, in different locations, and involved different drugs than the 2015 crimes, Holifield's rights were not violated by double jeopardy. (2) Because there was no double jeopardy violation, there was no evidence to support Holifield's claim of ineffective counsel. (3) Because Holifield failed to assert the claim that his rights were violated in the prosecution of the 2015 crimes in his motion for PCR, the issue was waived and procedurally barred on appeal. (4) Because Holifield failed to assert his claim of waiver concerning the prosecution of the 2016 crimes in his motion for PCR, the issue was waived and procedurally barred on appeal. Therefore, the Court of Appeals affirmed the judgment of the Scott County Circuit Court.

Affirmed - 2019-CP-00840-COA (Sept. 8, 2020)

Opinion by Judge Lawrence

Hon. Christopher A. Collins (Scott County Circuit Court)

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

Briefed by [Schyler Burney](#)

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MCDONALD V. STATE

CIVIL - POST-CONVICTION RELIEF

CRIMINAL PROCEDURE - POST-CONVICTION RELIEF - STATUTE OF LIMITATIONS - A post-conviction relief motion must be filed within three years after a conviction on a guilty plea

CRIMINAL PROCEDURE - DOUBLE JEOPARDY - EXCEPTION - The protection against double jeopardy is one of the fundamental rights that is excepted from the statute of limitations and successive motion bar

CRIMINAL PROCEDURE - INEFFECTIVE ASSISTANCE OF COUNSEL - STATUTE OF LIMITATIONS - The claim of ineffective assistance of counsel may be excepted from the statute of limitations and successive-motion bar in exceptional circumstances

FACTS

Albert McDonald shot his girlfriend and then went on to kill two people and seriously injure two others. In 2005, McDonald pled guilty to two counts of capital murder, three counts of aggravated assault, three counts of burglary, and one count of kidnapping. At his plea hearing, McDonald stated that he and his attorney discussed a possible conflict of interest and that he waived any conflict. In 2015, he filed a motion for post-conviction relief, contending that he received ineffective assistance of counsel, that some of his indictments were defective, and that he was subjected to double jeopardy. The circuit court dismissed the motion as barred by the statute of limitations and without merit. In 2018, McDonald filed four post-conviction relief motions challenging his convictions. The circuit court denied the motions due to the three-year statute of limitations of the Uniform Post-Conviction Collateral Relief Act. McDonald appealed, and the Court of Appeals consolidated his appeals.

ISSUES

Whether (1) McDonald was subjected to double jeopardy; (2) McDonald received ineffective assistance of counsel; and (3) the circuit court erred in denying McDonald's motion for post-conviction relief.

HOLDING

(1) Because McDonald pled guilty to the charges in one indictment while similar charges in the other indictment were retired to the files, McDonald was not subjected to double jeopardy. (2) Because McDonald waived any conflict of interest at his plea hearing and did not provide evidence that the possible conflict was disqualifying, his attorney's performance was in any way deficient, or that he suffered any prejudice, McDonald's ineffective assistance of counsel claim was without merit. (3) Because most of McDonald's claims were time barred by the three-year statute of limitations, and because the only two claims that might have been exceptions to those bars were without merit, McDonald's motion for post-conviction relief failed and the circuit court did not err in denying the motion. Therefore, the Court of Appeals affirmed the judgment of the Union County Circuit Court.

Affirmed - 2019-CP-00444-COA (Sept. 8, 2020)

Opinion by Presiding Justice Wilson

Hon. Andrew K. Howorth (Union County Circuit Court)

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

Consolidated with:

Affirmed - 2019-CP-00446-COA (Sept. 8, 2020)

Hon. Andrew K. Howorth (Union County Circuit Court)

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

Consolidated with:

Affirmed - 2019-CP-00449-COA (Sept. 8, 2020)

Hon. Andrew K. Howorth (Union County Circuit Court)

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

Consolidated with:

Affirmed - 2019-CP-00453-COA (Sept. 8, 2020)

Hon. Andrew K. Howorth (Union County Circuit Court)

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

Consolidated with:

Affirmed - 2019-CP-00454-COA (Sept. 8, 2020)

Hon. Andrew K. Howorth (Union County Circuit Court)

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

Briefed by [Gabrielle Beech](#)

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COURT OF APPEALS - CRIMINAL CASES

GILLUM V. STATE

CRIMINAL - FELONY

CONSTITUTIONAL LAW - DOUBLE JEOPARDY - SUCCESSIVE PROSECUTION - To determine whether double jeopardy protections apply, the court must determine whether each offense contains an element not present in the other; if not, they are labeled the same offense for double jeopardy purposes, and successive prosecutions and/or punishments are constitutionally barred

CRIMINAL LAW - CAPITAL MURDER - SUCCESSIVE PROSECUTION - A capital murder defendant cannot be convicted of both capital murder and the underlying felony; the reason being that the defendant cannot be twice prosecuted for the same actions

CONSTITUTIONAL LAW - DOUBLE JEOPARDY - LESSER OFFENSE - Pursuant to *Meeks v. State*, where no further evidence is needed to establish the lesser offense, once the prosecution has proven the greater offense, punishment for the lesser is barred

SENTENCING - CONVICTION - LESSER-INCLUDED OFFENSE - When a defendant is improperly convicted of a lesser included offense, the proper remedy is to vacate both the conviction and sentence on the included offense, leaving the conviction and sentence on the greater offense intact

FACTS

William Gillum originally met Shanna Harper and her boyfriend, Clayton Bexley, at a friend's house. Their only interactions occurred when the three of them would use methamphetamine and marijuana together at either Gillum's house or the couple's trailer. After Harper and Bexley smoked meth at Gillum's house, Gillum "got pushy" with Harper about cleaning his carpets and directed Bexley to go look at a fan outside of his house. Shortly thereafter, Gillum threw a gun on the kitchen table and began to attack Harper. Gillum drug Harper to his bedroom, punching and slapping her. After tying Harper to the bed, Gillum forcibly rape Harper, and Harper either fell asleep or blacked out. Harper awoke to Gillum kissing her and saying that he had to go work. Gillum left Harper tied to the bed and, after Gillum left, Harper escaped and contacted law enforcement. The police found Bexley's deceased body wrapped in a quilt by a debris pile close to Gillum's house. Bexley's cause of death was a gunshot wound to the head. A rifle and projectile was recovered from Gillum's shed, and a shell casing was recovered from the steps leading into the house. The circuit court jury indicted Gillum of capital murder with the underlying felony of kidnapping ("Count I"), an additional kidnapping count ("Count II"), and one count of forcible rape ("Count III"). The trial court sentenced Gillum to serve life without parole for capital murder, thirty years for kidnapping, and thirty years for forcible rape, with the sentences to run consecutively. Gillum appealed.

ISSUE

Whether Gillum's separate convictions for capital murder and kidnapping violated his Fifth Amendment right against double jeopardy.

HOLDING

Because a criminal defendant cannot be prosecuted twice for the same actions, Gillum's separate convictions for capital murder and kidnapping were in violation of his Fifth Amendment right against double jeopardy. Therefore, the Court of Appeals reversed and rendered in part the judgment of the Forrest County Circuit Court.

Reversed & Rendered in Part; Sentence Vacated in Part - 2019-KA-00473-COA (Sept. 8, 2020)

Opinion by Chief Judge Barnes

Hon. Jon Mark Weathers (Forrest County Circuit Court)

Hunter Nolan Aikens (Pub. Def. Office) for Appellant - Matthew Walton (Att'y Gen. Office) for Appellee

Briefed by [Morgan Hart](#)

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SMITH V. STATE

CRIMINAL - FELONY

EVIDENCE - WITNESS IDENTIFICATION - IMPROPER POLICE INFLUENCE - A trial judge should exclude the identification evidence only if improper police influence created a very substantial likelihood of irreparable misidentification, but if its indicia of reliability outweighs the corrupting effect of the police-arranged suggestive circumstances, it should still be admitted; not all suggestive circumstances raise due process concerns warranting a pretrial ruling

EVIDENCE - OBJECTIONS - WAIVER - Because an appellate court cannot find that a judge committed reversible error on a matter not brought before him or her to consider, any grounds for objection, including constitutional arguments not raised at trial, constitutes a waiver of those grounds for objection

FACTS

Late in the evening in April 2017, two neighboring houses were burglarized in Lambert, Mississippi. Around 1 a.m., Chatoria Mays, who lived in the first house, awoke to see a man standing at her bedroom door. She screamed, and the man fled out the back door. Later that morning, John and Joyce Lewis, who owned the second burglarized house, discovered a window was broken and their phones were missing. John also testified that his car had noticeably less gas in it than the night before. A neighbor, Ashley Adams, saw the burglar and positively identified him as Denzel Smith. Adams knew Smith because they attended school together and “hooked up” once or twice. Additionally, Adams’s description of Smith’s appearance matched Mays’s description. At trial, Mays testified that she performed her own investigation, “calling around,” and stated, “that’s when names started coming up.” Smith objected and moved for a mistrial at this time, which was not granted. On direct examination, Mays claimed that she first heard Smith’s name as a possible suspect at the beauty shop, then looked Smith up on Facebook and identified him by his profile picture. On cross-examination, Mays admitted she had given the police a different name before she had heard of Smith. Unprompted, Mays then stated that Police Chief Marvin Pryor suggested Smith’s name to her before she heard it at the beauty shop. She testified that Pryor showed her photographs of Smith and the other man she named, and she identified Smith as the burglar. She also claimed she made a mistake when, on direct examination, she said she could not see the burglar’s face. The judge, prosecution, and defense were all surprised by Mays’s testimony, which contradicted her testimony on direct examination and in her proffer. Despite this, Smith did not move for a mistrial. The jury found Smith guilty of two counts of burglary. Smith appealed.

ISSUE

Whether the trial court erred by allowing a witness to testify that she identified Smith after she saw his Facebook profile picture.

HOLDING

Because Mays specifically testified that she first heard Smith’s name at the beauty shop, not from the police, before looking him up on Facebook, and because Smith failed to raise this issue at trial, the trial judge’s ruling was correct in light of the evidence before him and the issue was waived on appeal. Therefore, the Court of Appeals affirmed the judgment of the Quitman County Circuit Court.

Affirmed - 2019-KA-00758-COA (Sept. 8, 2020)

Opinion by Presiding Judge Wilson

Hon. Charles E. Webster (Quitman County Circuit Court)

Mollie Marie McMillin (Pub. Def. Office) for Appellant - Jeffrey A. Klingfuss (Att’y Gen. Office) for Appellee

Briefed by [Cameron Johnson](#)

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