

MISSISSIPPI SUPREME COURT DECISIONS – MARCH 11, 2021**SUPREME COURT - CIVIL CASES****CITY OF BILOXI V. SEC'Y OF STATE****CIVIL - CONTRACT**

CONTRACTS - INTERPRETATION - SEPARATE AGREEMENTS - Separate agreements executed at the same time, by the same parties, for the same purposes, and as part of the same transaction, are to be construed together

CONTRACTS - INTERPRETATION - INTENT - The words employed in a contract are by far the best resource for ascertaining the intent and assigning meaning with fairness and accuracy

CONTRACTS - INTERPRETATION - CLAUSES - When construing a contract, a court will read the contract as a whole, so as to give effect to all of its clauses

FACTS

The City of Biloxi (“City”), the Secretary of State on behalf of the State of Mississippi (“State”), and the Board of Trustees of the State Institutes of Higher Learning (“IHL”) settled an ownership dispute over property leased to a casino and agreed how to divide the annual casino rent. The first agreement was the Point Cadet Compromise and Settlement Agreement (“PCCSA”). The PCCSA resolved the long-standing dispute between the four parties. Under the PCCSA, the City was entitled to keep the first \$2,733,000 in rent collection; any additional rent was to be divided equally among the City, the State, and the IHL. The second agreement was the Podium Lease which tied the amount of annual rent the casino was required to pay to the casino’s revenue; however, there was a \$2,733,000 minimum rent required. Under the Podium Lease, this floor would increase every five years for inflation, according to the Consumer Price Index (“CPI”). For fourteen years, the City received \$2,733,000 in rent and shared all rent in excess. In 2016, the City filed an enforcement action against the State for taking more than its appropriate share. In that action, the City made no assertion that it was actually owed more based on inflation. Further, in 2019, the City asked the chancery court to declare that it could adjust its base amount of rent for inflation before divvying its rent with the State and the IHL. However, the City’s only support of its new inflation-adjustment claim was the three public entities’ lease with the casino. The casino lease required the minimum amount of rent owed to be adjusted for inflation every five years, however, the lease did not govern how the City, the State, and the IHL were to divide this rent. Instead, the manner in which the rent was divided was governed solely by the settlement agreement which did not provide for inflation adjustment. Therefore, the chancery court denied the City’s motion for declaratory judgment. The City appealed.

ISSUES

Whether the chancery court erred by (1) not interpreting the PCCSA’s base rent to include the Podium Lease CPI adjustment and (2) applying the doctrine of judicial estoppel.

HOLDING

(1) Because the chancery court read the two documents together and found that they were unambiguous, and because the Podium Lease did not address or alter how the City, the State, and the IHL were to divide the rent, the chancery court did not err in interpreting the documents. (2) Because the PCCSA clearly stated that the City was entitled to the first \$2,733,000 in annual rent and any additional rent would be divided in thirds, the City was not entitled to a CPI increase and the chancellor did not err in applying the doctrine of judicial estoppel. Therefore, the Supreme Court affirmed the judgment of the Harrison County Chancery Court.

Affirmed - 2020-SA-00174-SCT (Mar. 11, 2021)

Opinion by Justice Maxwell

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

Michael E. Whitehead, Peter C. Abide, & Gerald Henry Blessey for Appellant - Johnathan Paul Dyal, Ben H. Stone, Donald C. Dornan Jr., William Dement Drinkwater, Stephanie Gee Beaver, Karl Crawford Hightower, & Katherine Hewes Hood for Appellees

Briefed by [Gabrielle Beech](#)

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HYUNDAI MOTOR AM. V. APPLEWHITE

CIVIL - WRONGFUL DEATH

CIVIL PROCEDURE - NEW TRIAL - STANDARD - A new trial can be ordered when allowing the verdict to stand would sanction an unconscionable injustice

CIVIL PROCEDURE - FAIR TRIAL - IMPROPER INFLUENCE - A fair trial is denied when improper influences are actually brought to bear on the jury

CIVIL PROCEDURE - IMPROPER INFLUENCE - REVERSAL - The right to a fair trial is defeated and reversal is required when a party's conduct creates an "appearance of unfairness" in court proceedings, even if proof is lacking that the party actually attempted to influence jurors

PROFESSIONAL RESPONSIBILITY - MISCONDUCT - DUTY TO REPORT - All lawyers have a duty to uphold and report any violations of the Miss. Rules of Professional Conduct; whenever a court receives information indicating a substantial likelihood that a lawyer has committed a violation of such rules, it too must take appropriate action

PROFESSIONAL CONDUCT - JUDICIAL RESPONSIBILITIES - DISQUALIFICATION - A judge shall hear and decide all assigned matters within the judge's jurisdiction except those in which disqualification is required

PROFESSIONAL CONDUCT - JUDICIAL RESPONSIBILITIES - DISQUALIFICATION - Judges should disqualify themselves in proceedings in which their impartiality might be questioned by a reasonable person knowing all the circumstances

FACTS

After a car accident killed three people, representatives of their estates ("Estates") brought suit against Hyundai Motor America ("Hyundai"). After a jury trial, the Estates were awarded a verdict of ten million dollars. After trial, Hyundai petitioned for an investigation of outside influence on the jury based on information that witness Carey Sparks, at the behest of the Estates' attorney, Dennis Sweet III, had improperly influenced the jury. Based on the false testimony of Sparks and Sweet, the trial court denied the motion for a new trial as well as Hyundai's motion to allow discovery to investigate. Hyundai appealed, and in 2017, the Supreme Court ordered discovery and a Miss. R. Evid. 606(b) hearing after the parties completed discovery. Hyundai produced numerous witnesses who either had conversations with Sparks or overheard conversations where Sparks spoke about his involvement in the case and his involvement as a consultant for Sweet. In depositions, Sparks denied knowing or working for Sweet and denied having any contact with his friend, Richard Cannon, whose aunt, Carol Brooks, was on the jury. It was not until Hyundai showed a history of consultant payments from Sweet to Sparks that Sparks admitted his relationship with Sweet as a consultant. After Hyundai confronted Sparks with evidence that he spoke to Cannon at the time of the trial, Sparks admitted he spoke to Cannon; however, he claimed it had nothing to do with the trial. When asked about his involvement with Sparks, Cannon repeatedly responded with the phrase, "I know him." When questioned by the trial court, all jurors, including Brooks, denied having contact with Sparks or Cannon during or after the trial. Brooks admitted she may have spoken to Cannon, but she did not speak about the trial. Based only on the juror's responses, and without considering the lies told to the trial court by Sweet and Sparks directly after the trial, the trial court denied the motion for a new trial. Hyundai appealed.

ISSUES

Whether the trial court abused its discretion when it denied Hyundai's motion for a new trial.

HOLDING

Because Sparks and Sweet acted with actual impropriety through their deception of the court, and because they created the appearance of impropriety by possibly contacting a jury member during a jury trial, thus tainting the entire proceedings, the trial court abused its discretion when it denied Hyundai a new trial. Therefore, the Supreme Court reversed and remanded the judgment of the Coahoma County Circuit Court.

CONCURRENCES

Justice Beam agreed with the Supreme Court's opinion but wrote separately to address reporting allegations of attorney misconduct to the Mississippi Bar. She asserted that she would order the transmission of a copy of the Supreme Court's opinion to the Mississippi Bar for further investigation as necessary.

Justice Ishee concurred with the majority but wrote separately to emphasize that it is the duty of the judiciary to participate in cases when there is no ground for their recusal.

DISSENTS

Presiding Justice Kitchens dissented, arguing that the evidence of jury tampering was too tenuous to justify the extreme step of invalidating the jury's verdict.

Presiding Justice King asserted that the Supreme Court should not impose jury verdict reversal as a sanction for posttrial attorney misconduct. He also stated that proof of actual bias need not exist to warrant judicial recusal, so long as the appearance of partiality is present, and argued that a reasonable person would be justified in questioning the Supreme Court's impartiality.

Justice Coleman argued that the judgment for the appellees should be affirmed because the trial judge was in a better position to judge the credibility of the jurors who testified at the hearing and the trial judge had found that no extraneous, prejudicial information was brought to the jury. He agreed with the majority that the recusals of Chief Justice Randolph and Justice Griffis were not warranted. He also wrote to address the issues raised on appeal by the appellants that were unaddressed by the other five opinions authored in the case. These issues included: whether legally sufficient evidence supported appellees' theory that the Hyundai Excel was traveling eighteen miles per hour at impact; whether appellees' expert's opinion that the Excel was inadequately designed to withstand the forces involved in the accident was inadmissible under *Daubert* or otherwise insufficient to support the verdict; whether appellees improperly circumvented the Supreme Court's mandate in *Appenwhite I*; whether the trial court erred in excluding evidence that the Excel's occupants were not properly seat-belted; whether the trial court erred in excluding Hyundai's photographic evidence; whether Hyundai was denied the right to a fair trial by an impartial jury; and whether the verdict, which failed to apportion any fault to the Excel's driver, reflected improper prejudice or passion.

Reversed & Remanded - 2015-CA-01886-SCT (Mar. 11, 2021)

En Banc Opinion by Chief Justice Randolph - Concurrences by Justice Beam & Justice Ishee - Dissents by Presiding Justice Kitchens, Presiding Justice King, & Justice Coleman

Hon. Albert B. Smith, III (Coahoma County Circuit Court)

J. Collins Wohner Jr., Michael James Bentley, Jimmy B. Wilkins, Walter Edgar McGowan, William O. Lockett Jr., & Robert William Maxwell for Appellants - Ralph Edwin Chapman, Eduardo Alberto Flechas, Dana J. Swan, Dennis C. Sweet III, & Sara Bailey Russo for Appellees

Briefed by [McKenzie Williamson](#) & [Kathleen Workman](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – MARCH 9, 2021

COURT OF APPEALS - CIVIL CASES

CURRIE V. MCNEAL

CIVIL - CONTRACT

CONTRACTS - ARBITRATION - MOTION TO COMPEL - To determine the validity of a motion to compel arbitration under the Federal Arbitration Act, courts conduct a two-pronged inquiry to determine whether: (1) there is a valid arbitration agreement and whether the parties' dispute is within the scope of the arbitration agreement and (2) legal constraints external to the parties' agreement foreclosed arbitration of those claims

CONTRACTS - ENFORCEMENT - INCORPORATION OF OTHER DOCUMENTS - For an incorporation by reference to be effective, it must be clear that the parties to the agreement had knowledge of and assented to the incorporated terms

CONTRACTS - ARBITRATION - SCOPE - Broad arbitration language governs disputes "related to" or "connected with" a contract, and narrow arbitration language requires arbitration of disputes that directly "arise out of" a contract

CONTRACTS - ARBITRATION - EXTERNAL CONSTRAINTS - The existence of fraud in the formation of the contract may be considered when assessing whether legal constraints exist external to the agreement, which might invalidate the arbitration provisions

FACTS

In 2014, Mike and Vicki Currie contacted Eddie McNeal, a salesman for RiverSource Insurance Company ("RiverSource"), inquiring into his service as a financial advisor. After McNeal received confirmation from the Curries that they intended to use his financial-planning services, he sent an engagement letter explaining the steps he would take to assess their financial-planning needs. McNeal suggested that the Curries replace their existing life insurance policies with policies issued by RiverSource. The Curries complied with McNeal's recommendation and executed the Ameriprise Financial Planning Service Agreement ("AFPSA"), a contract in which Ameriprise agreed to perform services based on the terms and conditions outlined in the Client Disclosure Brochure, including an arbitration clause. Shortly after signing the AFPSA, Mike committed suicide. The Curries' new RiverSource policy excluded a beneficiary from collecting proceeds if an insured committed suicide within first two years of the policy. Vicki filed suit, alleging negligence, breach of fiduciary duty, and breach of contract. The circuit court granted a motion to compel arbitration, finding that a valid arbitration agreement existed, that all claims fell within the scope of the agreement, and that no legal constraints existed to invalidate the arbitration agreement. Vicki appealed.

ISSUES

Whether (1) the parties entered into a valid arbitration agreement; (2) the dispute fell within the scope of the arbitration provision; and (3) external factors precluded arbitration.

HOLDING

(1) Because the AFPSA gave the Curries notice that the brochure contained the terms and conditions of the agreement, and because the brochure contained the arbitration agreement, the arbitration agreement was valid. (2) Because Vicki's claims arose out of or related to the actions or conduct of McNeal, the dispute fell within the scope of the arbitration provision. (3) Because fraud was not present in the contract agreement, and because Vicki could not circumvent a written contract based on the argument that she did not read it, no external factors precluded arbitration. Therefore, the Court of Appeals affirmed the judgment of the Lee County Circuit Court.

Affirmed - 2019-CA-01045-COA (Mar. 9, 2021)

En Banc Opinion by Judge Greenlee

Hon. Paul S. Funderburk (Lee County Circuit Court)

Robert M. Frey, Phil B. Abernethy, William C. Murphree, & Caroline Baker Smith for Appellants - William F. Ray for Appellees

Briefed by [Schlyler Burney](#)

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HENDRICKS V. ROBERTS

CIVIL - MEDICAL MALPRACTICE

CIVIL PROCEDURE - DISMISSAL - FAILURE TO PROSECUTE - Miss. R. Civ. P. 41(b) provides that dismissals with prejudice for failure to prosecute require a clear record of delay or contumacious conduct by the plaintiff and where lesser sanctions would not serve the best interests of justice

CIVIL PROCEDURE - DISMISSAL - FAILURE TO PROSECUTE - Where a plaintiff fails to prosecute or comply with either the rules of civil procedure or a court's orders, a defendant may move for dismissal of an action or of any claim but only in the most egregious cases

TORTS - MEDICAL MALPRACTICE - MEMORANDUM OF AUTHORITIES - Under Miss. Unif. Cir. & County Ct. R. 4.02(2), court rules require a memorandum of authorities in support of any motion to dismiss or for summary judgment to be filed with the motion and the respondent shall reply within ten days after service of the movant's memorandum

FACTS

In June 2012, Mary Hendricks became a resident of Grace Health & Rehabilitation of Grenada, LLC ("GHR"), under the care of Dr. Joseph F. Roberts, for treatment following a hip surgery. While at GHR, Mary developed an ulcer that became infected and required hospitalization. Mary passed away when the ulcer wound became septic and induced a stroke in July 2012. In July 2014, Edward Hendricks, Mary's son, served pre-suit notice-of-claim letters on GHR and Roberts. Edward filed a wrongful death suit against GHR and Roberts in September 2014, claiming that their substandard care resulted in Mary's death. Roberts filed a motion to dismiss and contended that the two-year statute of limitations had expired. The circuit court found that the statute of limitations began to run when Edward first became reasonably aware of any negligence in August 2012, when Roberts filed the death certificate that listed sepsis as Mary's cause of death. Additionally, when Edward served pre-suit notice-of-claim letters, the statute of limitations was extended for sixty days. The circuit court denied the motion to dismiss because the statute of limitations expired in October 2014, finding that Edward's wrongful death complaint was timely. In 2015, Roberts propounded discovery to Edward and Edward responded to Roberts's requests for admissions. Over three years later, Roberts filed a motion to dismiss the lawsuit against him for failure to prosecute under Miss. R. Civ. P. 41(b). Roberts asserted that Edward failed to respond to his interrogatories or request to produce documents and failed to take any affirmative action. The Grenada County Circuit Court granted the motion for dismissal with prejudice. Hendricks appealed.

ISSUES

Whether the circuit court erred in (1) dismissing Edward's action against Roberts and (2) failing to require Roberts to submit a memorandum of authorities to support his motion to dismiss.

HOLDING

(1) Because there was a clear record of delay by Edward failing to take any action of record over a course of three years, and because the lesser sanction Edward argued was already required of him under the Miss. R. Civ. P., the circuit court properly dismissed the lawsuit for failure to prosecute. 2) Because Edward failed to demonstrate how Roberts's failure to strictly comply with Miss. Unif. Cir. & County Ct. R. 4.02 resulted in any actual prejudice, the lack of a memorandum had no impact on the ruling. Therefore, the Court of Appeals affirmed the judgment of the Grenada County Circuit Court.

Affirmed - 2019-CA-01237-COA (Mar. 9, 2021)

Opinion by Judge McCarty

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

James F. Noble III for Appellant - Harris Frederick Powers III & Tommie Gregory Williams Jr. for Appellee

Briefed by [MaryScott Polk](#)

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PRYER V. GATES

CIVIL - OTHER

CIVIL PROCEDURE - MANDAMUS ACTIONS - MINISTERIAL DUTY - A mandamus petition can direct an official or commission to perform its official duty or to perform a ministerial act, which is a duty that is positively designated by statute, ordinance, or regulation

CIVIL PROCEDURE - JURISDICTION - VOID JUDGMENTS - A judgment is deemed void if the court rendering it lacked jurisdiction

CIVIL PROCEDURE - MANDAMUS ACTIONS - ELEMENTS - Four essential elements must coexist before a writ of mandamus may be issued: (1) the petitioner must be authorized to bring the suit; (2) there must be a clear right in petitioner for the relief sought; (3) there must exist a legal duty on the part of the defendant to do the thing which the petitioner seeks to compel; and (4) there must be no other adequate remedy of law

FACTS

In 2011, Timothy Pryer filed a Request for Judge’s Order with the Itawamba County Circuit Court for the names of other defendants who were arraigned at the same time as him for a previous sexual battery conviction. The circuit court denied his motion, and Pryer filed additional motions requesting the same information. The circuit court entered an order denying those motions as they were identical to the motion previously rejected. Pryer appealed the denial, and the Court of Appeals affirmed the circuit court’s ruling. Additionally, the Supreme Court granted certiorari and affirmed the circuit court’s ruling. In 2013, Pryer filed a public records action in the Itawamba County Chancery Court. The chancery clerk issued summonses for Pryer to serve via mail, but the defendants did not answer. Subsequently, the chancery clerk issued summonses for the Itawamba County Sheriff’s Department to issue, but, according to Pryer, they were never issued. Pryer had the summonses reissued in 2016, but the defendants still did not answer. The chancery clerk’s office contacted the constable to serve process, but Pryer alleged the defendants were never served. Pryer filed a Petition for Writ of Mandamus with the chancery court to compel the constable or sheriff’s office to serve the defendants with summonses and complaints. The chancery court transferred the mandamus petition to the Itawamba County Circuit Court under a specifically retained jurisdiction. A special judge was appointed to adjudicate the mandamus petition. On review, the circuit court dismissed the mandamus petition without prejudice, along with Pryer’s motion for public records. Pryer appealed.

ISSUES

Whether the circuit court (1) had jurisdiction to rule upon and dismiss Pryer’s public records action pending in the Itawamba County Chancery Court and (2) abused its discretion in denying Pryer’s mandamus petition.

HOLDING

(1) Because the circuit court exceeded the scope of jurisdiction conferred upon it by the transfer order, its dismissal of the public records action was null and void. (2) Because Pryer was authorized and had standing to seek mandamus on his own behalf, because Pryer had a “clear right” to the relief requested according to the unchallenged allegations of his mandamus petition, because a sheriff is required by law to execute process and it is his ministerial duty to do so, and because the record reflected that Pryer had no other adequate remedy of law, the trial court erred in dismissing the mandamus action. Therefore, the Court of Appeals reversed, rendered, and remanded the judgment of the Itawamba County Circuit Court.

Reversed, Rendered, & Remanded - 2019-CP-00205-COA (Mar. 9, 2021)

Opinion by Presiding Judge Carlton

Hon. Lee J. Howard (Itawamba County Circuit Court)

Pro se for Appellant - Arnulfo Ursua Luciano, Daniel Judson Griffith, & Bethany Ann Tarpley for Appellees

Briefed by [Jacob D. Hamm](#)

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SIDERS V. ZICKLER

CIVIL - DOMESTIC RELATIONS

FAMILY LAW - DIVORCE - PROPERTY SETTLEMENT AGREEMENTS - A property settlement agreement that is incorporated into a divorce decree must be interpreted by courts as any other contract

FAMILY LAW - PROPERTY SETTLEMENT AGREEMENTS - CONTEMPT - The burden of proof in a contempt action is on the movant, but a failure to comply with a divorce decree is prima facie evidence of contempt

FAMILY LAW - PROPERTY SETTLEMENT AGREEMENTS - STATUTE OF LIMITATIONS - Pursuant to Miss. Code Ann. § 15-1-43, a property settlement agreement incorporated into the final judgment of divorce is subject to a seven-year statute of limitations period as it is not an ordinary contract; a contempt action to enforce such an agreement is considered an action to enforce a judgment

FACTS

Jane Zickler filed a petition for contempt, alleging that her ex-husband, James Siders, should be held in contempt for failing to maintain a life insurance policy that listed her as the beneficiary as required by the property settlement agreement (“PSA”) incorporated into their October 2003 divorce decree. The relevant PSA stated: “[Siders] shall continue to maintain the life insurance policy that is now in effect and shall name [Zickler] as irrevocable beneficiary of said policy. If [Zickler] dies, then the children of the parties shall be named as irrevocable beneficiaries.” Siders alleged that he did not have a life insurance policy in effect when the PSA was signed or when the divorce was granted due to the fact that his previous Equitable Variable Life Insurance policy had lapsed in 2002. Further, Siders contended that in November 2003, he obtained a new ten-year term life insurance policy. In 2013, Zickler requested a copy of Siders’s policy beneficiary statement and found that the beneficiary statement listed the parties’ children and Siders’s new wife as additional primary beneficiaries. Zickler objected, and Siders changed the policy to make Zickler the sole primary beneficiary. However, unbeknownst to Zickler, this policy lapsed just a few months later. Siders argued that, because he was not required to maintain a policy, he obtained the ten-year term policy voluntarily and that Zickler was aware of the terms of the ten-year term policy and accepted it without complaint. Zickler alleged that she knew nothing of the policy’s specific terms because Siders only provided her the beneficiary statements. It is unclear when Zickler discovered that Siders had again failed to maintain a life insurance policy naming her as the primary beneficiary. Following the petition for contempt, the Lamar County Chancery Court held a hearing on Zickler’s motion. The chancery court directed the parties to submit letter briefs on the motion. Ultimately, the chancery court found that the Equitable Variable Life Insurance policy was in effect prior to the divorce and Siders failed to show that it had lapsed prior to the divorce. The chancery court found Siders in contempt for failing to maintain the policy and ordered him to obtain a new policy with the same face value and list Zickler as the owner of the new policy. Siders filed a motion to alter or amend the judgment which included an attachment that Siders purported to be a letter from the insurance company and an unsigned draft affidavit that Siders’s attorney had prepared for an employee of the company. The attached documents purported to show that the Equitable Variable Life Insurance policy lapsed in June 2002. The chancery court denied Siders’s motion. Siders appealed.

ISSUES

Whether (1) the divorce decree did not require Siders to maintain a life insurance policy because no policy was in effect when Siders signed the PSA; (2) the chancery court improperly shifted the burden of proof; (3) the chancery court had authority to order Siders to make Zickler the owner of the new policy; (4) Zickler’s contempt action was barred by the statute of limitation; and (5) Zickler’s contempt action was barred by equitable estoppel.

HOLDING

(1) Because the PSA stated, “[Siders] shall continue to maintain the life insurance policy that is now in effect . . .” and “the” was a function word that indicated that the following noun was definite or had been previously specified by context which showed that the parties had a specific policy in mind that Siders would continue to maintain, because the pleadings and evidence further showed that the Equitable Variable Life Insurance Policy was the only policy that the parties could have contemplated in the PSA, and because Siders’s signature on the PSA was tantamount to a representation that the policy was still in effect when Siders signed the PSA, the Equitable Variable Life Insurance policy was in effect when the PSA was signed, and thus, Siders was required to maintain a life insurance policy. (2) Because Siders’s signature on the PSA constituted an implied representation that the policy was still in effect at the time of the divorce, because the chancery court properly ordered him to obtain a new policy even if he allowed the policy to lapse prior to the divorce, and because Siders did not submit a letter and an unsigned draft affidavit that purported to show that the policy lapsed prior to the divorce, the chancery court did not improperly shift the burden of proof. (3) Because

the PSA required Siders to maintain the Equitable Variable Life Insurance policy, and because a party may waive specific provisions of a PSA by failing to carry out his responsibilities, the chancery court did not err by ordering Siders to name Zickler as owner of the new policy. (4) Because a contempt action to enforce a PSA that has been incorporated into a divorce decree was subject to the seven-year statute of limitations, and because Zickler filed her contempt action six years after Siders breached the PSA, Sickler's contempt action was not barred by the statute of limitations. (5) Because the record contained no evidence that Zickler was aware of the details of the term policy or that she ever acquiesced in Siders' failure to maintain a life insurance policy, and because Siders's misrepresentation in the PSA constituted unclean hands, Zickler's contempt action was not barred by equitable estoppel. Therefore, the Court of Appeals affirmed the judgment of the Lamar County Chancery Court.

Affirmed - 2020-CA-00513-COA (Mar. 9, 2021)

Opinion by Presiding Judge Wilson

Hon. Deborah J. Gambrell (Lamar County Chancery Court)

Nicholas Kane Thompson for Appellant - S. Christopher Farris for Appellee

Briefed by [Mackinlee Rogers](#)

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COURT OF APPEALS - POST-CONVICTION RELIEF

ARNOLD V. STATE

CIVIL - POST CONVICTION RELIEF

CRIMINAL PROCEDURE - SENTENCING - HABITUAL OFFENDER - Miss. Code Ann. § 99-19-83 provides that a person convicted of a felony who shall have been convicted twice previously of any felony where one was a crime of violence shall be sentenced to life imprisonment

POST-CONVICTION RELIEF - WAIVER - PROCEDURAL BAR - A defendant who fails to raise an issue in his motion for post-conviction relief before the trial court may not raise that issue for the first time on appeal

CRIMINAL LAW - CONSPIRACY - CONFIDENTIAL INFORMANT - Miss. Code Ann. § 97-1-1(2) provides that where a person is acting at the direction of a law enforcement officer in the performance of official duty, any remaining conspirator may be charged if the alleged conspirator acted voluntarily and willfully and was not entrapped by the person acting at the direction of a law enforcement officer

FACTS

Lionel Arnold was indicted for selling a controlled substance and conspiring with an unnamed confidential informant ("CI") to sell the controlled substance. Arnold had previous convictions for manslaughter, carjacking, and possession of a firearm by a felon. He was indicted as a habitual offender but pled guilty to both counts in exchange for the State not pursuing sentencing as a habitual offender and dismissing a separate indictment. Arnold was sentenced consecutively to sixteen and twenty years of custody. Four months after sentencing, Arnold filed a post-conviction relief ("PCR") motion, arguing that, as a matter of law, he could not be convicted of conspiring with a CI and that his attorney provided ineffective assistance of counsel by failing to advise him of such. The Madison County Circuit Court denied the motion because Arnold acted voluntarily, willfully, and was not entrapped, and thus could be convicted of conspiring with a CI. Arnold appealed.

ISSUES

Whether the trial court erred in (1) denying Arnold's PCR motion and (2) convicting Arnold of conspiracy with a CI because it was a mere buyer-seller relationship.

HOLDING

(1) Because Miss. Code Ann. § 97-1-1(2) was amended to provide that a defendant could conspire with a CI if they acted voluntarily, willfully, and were not entrapped, the trial court properly denied Arnold's PCR motion. (2) Because

Arnold failed to raise the ‘mere buyer-seller’ argument in the PCR motion, this argument was procedurally barred on appeal. Therefore, the Court of Appeals affirmed the judgment of the Madison County Circuit Court.

Affirmed - 2020-CP-00223-COA (Mar. 9, 2021)

Opinion by Presiding Judge Wilson

Hon. Dewey Key Arthur (Madison County Circuit Court)

Pro se for Appellant - Zakia Helen Annyce Butler (Att’y Gen. Office) for Appellee

Briefed by [Ashley Pruitt](#)

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HUNT V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - STATUTE OF LIMITATIONS - EXCEPTIONS - Pursuant to Miss. Code Ann. § 99-39-5(2), a defendant who has pled guilty and seeks relief under the Miss. Uniform Post-Conviction Collateral Relief Act must file a PCR motion within three years after entry of the judgment of conviction unless the motion meets an exception to the section

POST-CONVICTION RELIEF - SENTENCING - ILLEGAL SENTENCE - When a defendant is given an illegal sentence that is more favorable than what the legal sentence would have been, he is not later entitled to relief through a post-conviction relief action

POST-CONVICTION RELIEF - INEFFECTIVE COUNSEL - PROCEDURAL BAR - In order to eliminate a procedural bar, a defendant must establish that counsel’s ineffective assistance caused him to enter his plea and that he would not have entered the plea but for counsel’s incorrect advice

FACTS

Gary Hunt was indicted for possession of a controlled substance in a correctional facility. The circuit court accepted Hunt’s guilty plea and sentenced Hunt to a term of seven years, with two years to serve in the custody of Mississippi Department of Corrections (“MDOC”) followed by five years of post-release supervision (“PRS”). The circuit court’s sentencing order also provided that the time Hunt was to serve in the instant cause was to run consecutively to the time Hunt was presently serving. The circuit court revoked Hunt’s PRS, citing five PRS violations. The circuit court ordered Hunt to serve the remaining five years of his suspended sentence in the custody of MDOC. Hunt was later convicted again on an unrelated charge for possession of a controlled substance in a correctional facility. He was sentenced to serve three years in the custody of the MDOC for that conviction. Hunt filed a post-conviction relief motion, asserting that his first sentence was illegal. The circuit court found that Hunt’s sentence was more lenient than the law allowed and thus illegal; however, the court also found that because the sentence was more lenient than allowed by law, Hunt could not claim prejudice as a result of the illegal sentence. The circuit court found that the PCR motion was without merit and denied the motion. Hunt appealed.

ISSUES

Whether (1) Hunt’s first sentence was illegal because he was sentenced to serve only two years in the custody of MDOC, with five years of PRS, when the applicable statute required he serve a minimum of three years in MDOC custody and prohibited a suspended sentence and (2) Hunt was denied effective assistance of counsel because his lawyer advised him to plead guilty to a sentence that did not conform to the applicable penalty statute and because his lawyer should have objected to the sentence the circuit court imposed.

HOLDING

(1) Because of the sentence’s more lenient terms, Hunt did not suffer any fundamental unfairness from the illegal sentence and was not entitled to post-conviction relief; considering this, Hunt’s illegally harsh sentence contentions were rejected on the merits because they were unsupported by the record. (2) Because Hunt’s ineffective assistance of counsel allegations were supported only by his own affidavit, and because Hunt did not prove any instance of deficiency

on his lawyer's part that constituted ineffective assistance of counsel of constitutional dimensions, the claim was without merit. Therefore, the Court of Appeals affirmed the judgment of the Leflore County Circuit Court.

Affirmed - 2019-CP-01567-COA (Mar. 9, 2021)

Opinion by Presiding Judge Carlton

Hon. W. Ashley Hines (Leflore County Circuit Court)

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

Briefed by [Rachel Fewell](#)

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COURT OF APPEALS - CRIMINAL CASES

GREEN V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - SENTENCE ENHANCEMENT - DOUBLE JEOPARDY - Sentence-enhancement statutes under which additional terms of imprisonment are imposed do not result in double-jeopardy violations

CRIMINAL PROCEDURE - SENTENCE ENHANCEMENT - FIREARMS - Miss. Code Ann. § 97-37-37(1) imposes an elevated sentence for use or display of a firearm during the commission of a felony and does not delineate an independent substantive offense

APPELLATE PROCEDURE - VERDICT - STANDARD OF REVIEW - Only in cases where the verdict is so contrary to the overwhelming weight of the evidence that allowing it to stand would sanction an unconscionable injustice will the appellate court disturb it on appeal

FACTS

James Green shot Carmichael Warren three times in front of a night club, causing severe injuries. Green and Warren disputed the events leading up to the shooting. Warren testified that about a few weeks before Green shot him, the two men got into an altercation where Green punched Warren in his chest, prompting a fight between them. According to Warren, he and Green apologized and seemed to be on good terms for a while after that. About a month and a half later, Warren and Green were at the same night club where, according to Warren, Green tiptoed behind him and shot him. Warren fell to the ground and Green stood over him and shot him two times in the chest. Warren testified that he was not carrying a weapon that night. Conversely, Green testified that several weeks before he shot Warren, that him and Warren got into an altercation and a bystander stopped the two from fighting. After this incident, Warren declared he would kill Green. The two eventually made up after Warren apologized to Green. Green further testified that, on the night of the shooting, he saw a gun in Warren's back pocket and witnessed him pointing it at someone as if he were about to shoot them. After Warren was escorted outside, he turned to Green and allegedly reached into his back pocket. Green testified he feared for his life, pulled out his own firearm, and shot Warren before he could shoot him first. He further claimed he shot Warren two more times because Warren was still standing and attempted to draw his weapon again. After he shot Warren, Green fled the scene. Green admitted to not informing the investigating officer that he saw a gun in Warren's back pocket. Additionally, Green did not report to the officer that he shot Warren in self-defense. Lastly, the State revealed that Green had told the investigating officer that Warren "went down" after the first shot, as opposed to the second shot as he claimed on the witness stand. Green insisted he reported to the officer incorrectly because he was "shaken up" by the night's events and claimed he was telling the truth on the witness stand. The jury found Green guilty of aggravated assault with a firearm enhancement. The trial court sentenced him to serve sixteen years in custody, with five years suspended, and eleven years to serve. The trial court added five years of service to Green's aggravated assault sentence pursuant to the firearm enhancement statute. Green appealed.

ISSUES

Whether (1) Green’s “separate sentences” for aggravated assault and the firearm enhancement constituted double jeopardy and (2) the verdict was against the overwhelming weight of the evidence.

HOLDING

(1) Because Miss. Code Ann. § 97-37-37(1) imposes an elevated sentence for use or display of a firearm during the commission of a felony, and because it does not delineate an independent substantive offence, double jeopardy did not apply. (2) Because the jury properly assessed the conflicting testimony before it, and because evidence existed to prove that Green committed an aggravated assault, upholding the verdict did not sanction an unconscionable injustice. Therefore, the Court of Appeals affirmed the judgment of the Bolivar County Circuit Court.

Affirmed - 2019-KA-01744-COA (Mar. 9, 2021)

Opinion by Judge McCarty

Hon. Albert B. Smith III (Bolivar County Circuit Court, First Judicial Dist.)

Hunter Nolan Aikens (Pub. Def. Office) for Appellant - Zakia Helen Annyce Butler (Att’y Gen. Office) for Appellee

Briefed by [Lynette Potter](#)

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STEVENS V. STATE

CRIMINAL - FELONY

EVIDENCE - HEARSAY - PURPOSE - Out-of-court statements do not constitute hearsay when admitted to explain an officer’s course of investigation or motivation for the next investigatory step by that officer

EVIDENCE - ERROR IN ADMISSION - REVERSAL - For a case to be reversed on the admission or exclusion of evidence, it must result in prejudice and harm or adversely affect a substantial right of a party

RIGHT TO COUNSEL - INEFFECTIVE ASSISTANCE OF COUNSEL - TRIAL STRATEGY - When claiming ineffective assistance, a defendant must overcome a strong presumption that the challenged action might be considered sound trial strategy

CRIMINAL PROCEDURE - INDICTMENT - THEFT - Any person who has lawful possession of the property at the time of the theft may be identified in the indictment as the property’s owner

FACTS

A Craig Construction employee noticed that some tools, including a concrete saw, had been stolen. Additionally, a citizen residing near the construction site noticed a suspicious vehicle close to the time in question and recorded its license plate number. With this information, Investigator Derek Wyatt of the Neshoba County Sheriff’s Department determined that the vehicle belonged to Jason Stevens. When contacted, Stevens claimed he previously disposed of the vehicle. Wyatt ran Stevens’s name through LeadsOnline, an online database of pawnshop transactions, which revealed that Stevens pawned a concrete saw weeks after the equipment went missing. Stevens was arrested and charged with grand larceny. Both his indictment and the jury instructions listed Craig Construction employee Lucas Hale as the owner of the equipment although the tools really belonged to the business. Furthermore, Stevens wore his jail-issued yellow jumpsuit throughout the duration of the trial. During trial, Stevens raised a hearsay objection to Wyatt’s testimony regarding his LeadsOnline search. The trial judge overruled, stating Wyatt was “testifying from his investigation.” A “LeadsOnline Ticket” documenting the transaction was also admitted, over Stevens’s objection. Stevens later signed a *Miranda* waiver and confessed to stealing the equipment. Stevens was convicted by the jury and subsequently filed a motion for new trial, which was denied. Stevens appealed.

ISSUES

Whether (1) the trial court erred by allowing Wyatt to testify regarding the LeadsOnline search over Stevens’s hearsay objection; (2) the trial court erred in admitting the LeadsOnline Ticket; (3) Stevens’s trial attorney provided effective assistance by allowing Stevens to be tried in his jail attire and by not requesting jury instructions regarding his attire and

the LeadsOnline evidence; and (4) the evidence was insufficient to support Stevens's conviction because the indictment and jury instruction on the elements of the offense incorrectly identified the owner of the stolen tools.

HOLDING

(1) Because the testimony was offered to explain the course of the investigation, the trial judge did not err in allowing Wyatt's testimony. (2) Because Wyatt had already explained his investigation, the LeadsOnline Ticket was offered to prove the truth of the matter asserted, and thus, was hearsay which the trial judge erred in admitting. However, because the evidence admitted in error was essentially cumulative of other admissible evidence, the error was harmless and did not require reversal. (3) Because Stevens failed to overcome the presumption that choosing to be tried in jail attire and forgoing a request for jury instructions might be considered sound trial strategy, his trial attorney did not provide ineffective assistance. (4) Because Hale was in lawful possession of the tools at the time of the theft, it was permissible for the indictment and jury instructions to name him as the owner of the tools. Therefore, the Court of Appeals affirmed the judgment of the Neshoba County Circuit Court.

Affirmed - 2020-KA-00102-COA (Mar. 9, 2021)

Opinion by Presiding Judge Wilson

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

W. Daniel Hinchcliff (Pub. Def. Office) for Appellant - Scott Stuart (Att'y Gen. Office) for Appellee

Briefed by [Brie Mansoor](#)

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