

MISSISSIPPI SUPREME COURT DECISIONS – APRIL 8, 2021***SUPREME COURT - POST-CONVICTION RELIEF*****DICKERSON V. STATE****CIVIL - DEATH PENALTY - POST CONVICTION**

POST-CONVICTION RELIEF - PROCEDURAL BAR - LEAVE - When a conviction and sentence have been affirmed on appeal, the petitioner must seek and obtain leave from the Supreme Court before seeking relief in the trial court; leave is granted only if the application, motion, exhibits, and prior record show that the claims are not procedurally barred and that they present a substantial showing of the denial of a state or federal right

CRIMINAL PROCEDURE - POST-CONVICTION RELIEF - WAIVER - The procedural bars of waiver, different theories, and res judicata and the exception thereto as defined in Miss. Code Ann. § 99-39-21(1-5) are applicable in death penalty post-conviction relief applications

CRIMINAL PROCEDURE - INEFFECTIVE ASSISTANCE OF COUNSEL - BURDEN OF PROOF - 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; to establish deficient performance, a defendant must show that his attorney's representation fell below an objective standard of reasonableness

EVIDENCE - EXPERT TESTIMONY - DAUBERT HEARING - A court is not required to hold an actual *Daubert* hearing if an expert's opinion is challenged, rather, the opposing party must simply have a fair opportunity to respond to the challenge

FACTS

In 2012, David Dickerson was convicted of killing his ex-girlfriend, by shooting and burning her, along with arson and armed robbery. The jury found insufficient mitigating circumstances and sentenced Dickerson to death for the capital-murder conviction. In June 2015, the Court affirmed Dickerson's capital-murder conviction and sentence of death. The United States Supreme court denied Dickerson's petition for writ of certiorari. The Mississippi Office of Capital Post-Conviction Counsel filed a Petition for Post-Conviction Relief on Dickerson's behalf. The State filed a response in opposition to the petition, to which Dickerson filed a rebuttal.

ISSUES

Whether Dickerson was entitled to post-conviction collateral relief based upon (1) an alleged intellectual disability; (2) an alleged due-process violation in the admission of expert testimony; and (3) the alleged ineffective assistance of counsel in failing to request a hearing on and obtain an on-the-record determination of Dickerson's intellectual-disability status, failing to challenge expert findings that Dickerson was competent to stand trial, and failing to conduct a thorough pretrial mitigation investigation.

HOLDING

(1) Because expert testimony repeatedly concluded that Dickerson was not mentally retarded and rephrasing direct appeal issues for post-conviction purposes would not defeat the procedural bar of res judicata, he was not entitled to post-conviction relief based upon the intellectual-disability claim. (2) Because Dickerson failed to address potential relief from waiver of the claim via a showing of cause and actual prejudice, and because Dickerson's general claim lacked an arguable basis, he was not entitled to post-conviction relief based upon an alleged due-process violation. (3) Because defense counsel sought and acquired a mental examination, because defense counsel's decisions regarding *Daubert*-related challenges were trial strategy, because Dickerson failed to show actual prejudice, because defense counsel clearly recognized the necessity of a pretrial mitigation investigation, and because of the overwhelming evidence of his guilt,

Dickerson was not entitled to post-conviction relief for ineffective assistance of counsel. Therefore, the Supreme Court denied Dickerson's post-conviction relief motion.

Post-Conviction Relief Denied - 2015-DR-00954-SCT (Apr. 8, 2021)

En Banc Opinion by Justice Coleman

Hon. Lamar Pickard (Copiah County Circuit Court)

Scott A. Johnson, Alexander Dunlap Moorhead Kassoff, & Greg Richard Spore for Petitioner - Brad Alan Smith & Ashley Lauren Sulser (Att'y Gen. Office) for Respondent

Briefed by [MaryScott Polk](#)

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SUPREME COURT - CRIMINAL CASES

BUCHANAN V. STATE

CRIMINAL - FELONY

EVIDENCE - CONFRONTATION CLAUSE - FORFEITURE BY WRONGDOING - Pursuant to Miss. R. Evid. 804(b)(6), a party forfeits his rights to object to a prior testimonial statement on hearsay grounds if the party wrongfully caused – or acquiesced in wrongfully causing – the declarant's unavailability as a witness, and did so intending that result

EVIDENCE - CONFRONTATION CLAUSE - IMPUTED WAIVER - Waiver can be imputed under an agency theory of responsibility to a defendant who acquiesced in the wrongful procurement of a witness's unavailability but did not actually engage in wrongdoing apart from the conspiracy itself

EVIDENCE - HEARSAY - SELF-SERVING DECLARATIONS - A defendant is barred from introducing a statement made by the defendant immediately after the crime if it is self-serving and if the State refuses to use any of it

CRIMINAL LAW - AGGRAVATED ASSAULT - ELEMENTS - In order to find a defendant guilty of aggravated assault, there must be evidence beyond a reasonable doubt that the defendant attempted to cause serious bodily injury to another, or caused such injury purposely, knowingly, or recklessly under circumstances manifesting extreme indifference to the value of human life or that he attempted to cause or purposely or knowingly caused bodily injury to another with a deadly weapon or other means likely to produce death or serious bodily harm

CRIMINAL LAW - ACCOMPLICE LIABILITY - AIDING AND ABETTING - To aid and abet the commission of a felony, one must do something that will incite, encourage, or assist the actual perpetrator in the commission of the crime or participated in the design of the felony

FACTS

D'Alandis Love, Perez Love, Kelsey Jennings, and Ken-Norris Stigler were traveling to a club in Itta Bena when another vehicle approached and opened fire on their vehicle. D'Alandis was killed. Perez, Jennings, and Stigler were seriously injured. Armand Jones, Sedrick Buchanan, Michael Holland, Jacarius Keys, and James Earl McClung Jr. were developed as suspects in the shooting. Keys, accompanied by his attorney, gave a videotaped statement to the investigator, in which Jones, Holland, Buchanan, and McClung were implicated in the shooting. Approximately five months after Keys, Jones, Holland, Buchanan, and McClung were indicted, Keys was shot and killed. Holland and Buchanan were considered suspects in Keys's death. At the time of Keys's death, Jones was incarcerated. Before trial, Jones, Holland, Buchanan, and McClung moved to exclude Keys's videotaped statement based on hearsay and the Sixth Amendment Confrontation Clause. The trial court denied the motion and allowed the statement to be admitted into evidence. The defendants further moved to sever their cases and the motion was denied. At trial, Keys's videotaped statement was presented to the jury. Jones, Holland, Buchanan, and McClung were all convicted of various offenses. Jones was found guilty of first-degree murder and three counts of attempted first-degree murder. Buchanan was found guilty of three counts of aggravated assault. Jones and Buchanan filed motions for judgment notwithstanding the verdict and for a new

trial, which the trial court denied. Jones and Buchanan appealed. On appeal, the Court of Appeals affirmed Jones's and Buchanan's convictions. Jones and Buchanan filed separate petitions for certiorari.

ISSUES

Whether (1) the trial court erroneously admitted Keys's videotaped statement under Rule 804(b)(6); (2) Keys's statement should have been excluded as self-serving; and (3) insufficient evidence supported Buchanan's convictions of aggravated assault.

HOLDING

(1) Because sufficient evidence was presented to show that Jones conspired to kill the Loves, Keys was killed to prevent his testimony, and Jones had in mind the particular purpose of making Keys unavailable, Holland's and Buchanan's actions in Keys's death could be imputed to Jones, thereby waiving Jones's Confrontation Clause rights. (2) Because the State, not the defendant, introduced Keys's statement, the self-serving doctrine was inapplicable. (3) Because none of the eyewitnesses to the shooting identified Buchanan as the shooter, and because Keys's statement only briefly mentioned Buchanan and did not reference anything that Buchanan did or said to aid or abet the shooting, there was insufficient evidence to support Buchanan's convictions of aggravated assault. Therefore, the Supreme Court affirmed in part and reversed and rendered in part the judgment of the Leflore County Circuit Court.

CONCURRENCE IN PART & IN RESULT

Presiding Justice Kitchens argued that, because the trial court's admission of Key's statement under the hearsay exception for forfeiture by wrongdoing was harmless beyond a reasonable doubt, he agreed with the court in affirming Jones's conviction. He argued that there was no evidence that showed Jones had any foreknowledge or involvement in the scheme concocted by others to kill Keys, the conspiracy amongst Jones, Keys, and others to harm D'Alandis and Perez did not reasonably encompass Keys's homicide, and it was not reasonably foreseeable. Therefore, the trial court erred by admitting Keys's statement against Jones, but the error was harmless.

Affirmed In Part; Reversed & Rendered In Part - 2017-CT-01082-SCT (Apr. 8, 2021)

En Banc Opinion by Justice Griffis - Concurrence In Part & In Result by Presiding Justice Kitchens

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

David P. Voisin, M. Kevin Horan, & Bradley D. Daigneault for Appellants - Barbara Byrd (Att'y Gen. Office) for Appellee

Briefed by [Lynette Potter](#)

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HARRIS V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - MISTRIAL - DISCRETION - Whether to grant a mistrial is within the sound discretion of the trial court; the amount of discretion a trial court has to find manifest necessity turns on the reason for mistrial

CRIMINAL PROCEDURE - INDICTMENT - NOTICE - Under Miss. R. Crim. P. 17.4, the defendant must serve upon the prosecuting attorney and the clerk of the court a written notice of intent in order to use an alibi defense or insanity defense; a defendant is not required to give notice of using a medical condition as a defense to intent

CONSTITUTIONAL LAW - DOUBLE JEOPARDY - MANIFEST NECESSITY - The rule against double jeopardy prevents the State from retrying a defendant unless exceptional circumstances exist that justify, or make manifestly necessary, a declaration of mistrial by the trial court

FACTS

Jeremy Harris was indicted for attempted burglary of a dwelling in Tunica County. Harris's theory of defense was that there was no required intent to commit a criminal act because he had suffered an epileptic seizure during the time of the crime. Harris did not notify the State before trial that epilepsy would be used to support his defense. During the

first trial, Harris’s attorney addressed Harris’s epilepsy during opening statement, witnesses were cross-examined regarding Harris’s medical condition, and the State questioned Harris about his condition and medication. The State did not object to the defense’s use of epilepsy as a defense to intent. The circuit court, however, was concerned that any discussion of epilepsy should have been within the context of the insanity defense. The State then moved for a mistrial because it had not received advance notice required under the insanity defense. After finding no precedent from the Supreme Court stating that epilepsy be discussed outside the context of insanity, the circuit court declared a mistrial to be necessary and proper. During the second trial, Harris argued that epilepsy was a physical, not mental, illness. An epilepsy defense, he argued, was not tantamount to insanity and did not require notice. The circuit court agreed with Harris’s argument, but the jury still found Harris guilty of attempted burglary. Harris appealed.

ISSUE

Whether the trial court erred by granting the State’s motion for a mistrial.

HOLDING

Because Miss. R. Crim. P. 17.4(a)(1) did not require Harris to provide notice to the State regarding his use of epilepsy as a defense, no manifest necessity existed to support the trial court’s grant of mistrial, thus violating Harris’s double jeopardy rights upon his second trial and conviction. Therefore, the Supreme Court reversed and rendered the judgment of the Tunica County Circuit Court.

Reversed & Rendered - 2018-KA-01621-SCT (Apr. 8, 2021)

Opinion by Chief Justice Randolph

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

George T. Holmes & Justin Taylor Cook (Pub. Def. Office) for Appellant - Scott Stuart & Lisa L. Blount (Att’y Gen. Office) for Appellee

Briefed by [Rod Bridges](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – APRIL 6, 2021

COURT OF APPEALS - CIVIL CASES

BROWN V. STATE

CIVIL - POST-CONVICTION RELIEF

APPELLATE PROCEDURE - JUSTICE OR MUNICIPAL COURT - TIMELINESS - Miss. R. Crim. P. 29.1 provides that written notice for an appeal from a justice or municipal court to a county or circuit court must be filed within thirty days of judgment

POST-CONVICTION RELIEF - MOTION - OUT-OF-TIME APPEAL - There is no “excusable neglect” provision or condition for an extension under Miss. R. Crim. P. 29.1

APPELLATE PROCEDURE - JUSTICE OR MUNICIPAL COURT - APPLICABLE RULE - Miss. R. Crim. P. 29.1, not Miss. R. App. P 4(g), applies to appeals from a justice or municipal courts to circuit courts

FACTS

Donald Brown was found guilty of a second DUI offense on or about January 11, 2019, in the Justice Court of Tishomingo County. On June 24, 2019, Brown filed a motion for an out-of-time appeal from justice court to circuit court, arguing that he was unable to make a timely appeal due to the disability of being restricted by suicide watch from January 18, 2019, through June 6, 2019. However, there was nothing in the record that attested to when Brown’s suicide watch began. Within his brief, Brown included an exhibit from Region IV Mental Health Services dated June 6, 2019, that stated, “Tishomingo County Sheriff’s Department contacted the agency to complete a suicide risk assessment on [Brown]. [Brown] has been on suicide watch for a while now.” The report failed to mention when Brown was placed

on suicide watch. The circuit court denied and dismissed the appeal, finding Brown failed to file a written notice of appeal with the Tishomingo County Circuit Clerk within thirty days of the judgment. Brown appealed.

ISSUE

Whether the circuit court erred in denying Brown’s motion for an out-of-time appeal.

HOLDING

Because there was no “excusable neglect” provision or condition under Miss. R. Crim. P. 29.1, and because Miss. R. App. P. 4(g) was not applicable to appeals from justice court to circuit court, the circuit court did not err in denying Brown’s motion for an out-of-time appeal. Therefore, the Court of Appeals affirmed the judgment of the Tishomingo County Circuit Court.

Affirmed - 2019-CP-01311-COA (Apr. 6, 2021)

Opinion by Judge Westbrook

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

Pro se for Appellant - Lauren Gabrielle Cantrell (Att’y Gen. Office) for Appellee

Briefed by [William “Jack” Simpson](#)

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MADDOX V. MADDOX

CIVIL - PROPERTY

CIVIL PROCEDURE - MOTION TO AMEND - MISSISSIPPI - Miss. R. Civ. P. 15(a) allows a party to amend its pleadings after the filing of an answer only upon leave of court or upon written consent of the adverse party; leave shall be freely given when justice so requires

CIVIL PROCEDURE - PLEADINGS - AMENDMENTS - Applications to amend pleadings should be prompt and not the result of lack of diligence; the policy to freely grant amendments is not allowed to encourage delay, laches, and negligence

CIVIL PROCEDURE - PLEADINGS - AMENDMENT - If a party has had ample opportunity and time to amend its complaint and has offered no justification for why it did not do so, appellate courts generally will affirm the trial court’s disallowance of an amendment

FACTS

In 2013, Mitchell Maddox Sr. and Walterine Maddox (“Maddoxes”) filed a complaint against Mike and Deanna Maddox and Christopher and Amanda Sullivan (“Sullivans”) to remove cloud upon title, confirm title, and for injunctive relief regarding a sliver of land abutting their properties. In their complaint, the Maddoxes described the property at issue, claimed ownership to the land via a warranty deed recorded in the Simpson County Chancery Clerk’s office, and sought injunctive relief and attorney’s fees for trespass onto their property. Additionally, the Maddoxes asserted a claim of adverse possession in their complaint; however, the paragraph of the complaint asserting this claim made no reference to any real property by name or legal description. Two months later, the Sullivans filed an answer, a counterclaim, and a third-party complaint. The Sullivans sought an adjudication that they were the owners of the sliver of land and requested injunctive relief that would enjoin the Maddoxes from entering the Sullivans’ property. In 2018, nearly five years after the initial complaint was filed, both parties signed a pretrial order. The Maddoxes’ claim for adverse possession was listed in the pretrial order but the property description listed in the complaint was for the Maddox property which was undisputed by the Sullivans. The pretrial order also stated that the order would not be amended except by written consent of all parties or by order of the court to prevent manifest injustice. At trial in 2019, before counsel began direct examination, the Sullivans’ counsel announced to the trial court that they did not consent to a trial on anything other than the claims asserted in the parties’ pleadings pursuant to the pretrial order. Specifically, the Sullivans argued that all claims related to property were uncontested because the property described in the Maddoxes’ adverse possession claim was undisputed. After discovering the mistake, the Maddoxes made an ore tenus motion to

amend their complaint to add the correct legal description for the sliver of land. The trial court denied the Maddoxes' motion to amend and entered a final judgment. The Maddoxes appealed.

ISSUE

Whether the trial court abused its discretion in denying the Maddoxes' motion to amend their complaint.

HOLDING

Because the Maddoxes' claim for adverse possession was not properly before the trial court by virtue of the initial complaint nor by the pretrial order, and because the Maddoxes waited approximately six years to request leave to amend their complaint, there was no abuse of discretion or error in the trial court's ruling to deny the Maddoxes' *ore tenus* motion to amend. Therefore, the Court of Appeals affirmed the judgment of the Simpson County Chancery Court.

Affirmed - 2020-CA-00018-COA (Apr. 6, 2021)

Opinion by Judge Lawrence

Hon. David Shoemake (Simpson County Chancery Court)

John R. Reeves for Appellants - David Ringer & Brenton Matthew Carter for Appellees

Briefed by [Fatelia Avery](#)

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THOMAS V. STATE

CIVIL - POST-CONVICTION RELIEF

CRIMINAL PROCEDURE - POST-TRIAL MOTION - DENIAL BY OPERATION OF LAW - Pursuant to Miss. R. Crim. P. 25.3, a motion for a new trial or a motion to vacate judgment pending thirty days after judgment is deemed denied as of the thirtieth day after the motion was filed

CRIMINAL PROCEDURE - OUT-OF-TIME APPEAL - RIPENESS - A case must no longer be pending before the trial court and, therefore, final and ripe for appeal, before a party may make a motion for an out-of-time appeal

CRIMINAL PROCEDURE - OUT-OF-TIME APPEAL - STATUTE OF LIMITATIONS - Pursuant to Miss. Code Ann. § 99-39-5(2), a party may make a motion for an out-of-time appeal within three years after the time for taking an appeal from the judgment of conviction or sentence has expired

FACTS

In 2006, Jerrell Thomas was found guilty of a sexual offense and was sentenced to serve fifteen years in the custody of the Mississippi Department of Corrections. After trial, Thomas retained defense counsel and filed timely post-trial motions for a new trial and reconsideration of his sentence. For undisclosed reasons, the trial court never ruled on the motions. Therefore, no direct appeal was ever taken. Thereafter, Thomas's trial counsel passed away. In 2019, Thomas filed a motion for post-conviction relief ("PCR") requesting that the trial court grant him an out-of-time appeal and appointment of counsel as an indigent defendant. The trial court dismissed Thomas's PCR motion for an out-of-time appeal as time-barred because there was nothing in the record to justify Thomas's failure to request an out-of-time appeal for almost thirteen years after his failure to file a timely notice of appeal. Thomas appealed.

ISSUE

Whether the trial court erred by dismissing Thomas's PCR motion for an out-of-time appeal as time-barred.

HOLDING

Because the motions filed by Thomas in 2006 were never ruled upon, Thomas's case did not become final and ripe for appeal until after the July 2017 enactment of Miss. R. Crim. P. 25.3, and because Thomas filed his PCR motion within the three-year window provided for in Miss. Code Ann. § 99-39-5(2), the trial court erred by dismissing Thomas's PCR motion for an out-of-time appeal as time-barred. Therefore, the Court of Appeals reversed and remanded the judgment of the Forrest County Circuit Court.

DISSENT

Presiding Judge Wilson argued that Miss. R. Crim. P. 25.3 was not intended to apply to trial motions that had already been pending for more than thirty days. Therefore, it did not apply to Thomas's case, and the motions filed in 2006 remained pending. If Miss. R. Crim. P. 25.3 did apply to Thomas's case, the plain language would result in Thomas's 2006 motions being denied as of the thirtieth day after the motions were filed. The rule should not be interpreted to result in the denial of a motion nunc pro tunc to a date years earlier.

Reversed & Remanded - 2019-CP-01026 (Apr. 6, 2021)

Opinion by Chief Judge Barnes - Dissent by Presiding Judge J. Wilson

Hon. Robert B. Helfrich (Forrest County Circuit Court)

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

Briefed by [Glory Crocco](#)

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COURT OF APPEALS - CRIMINAL CASES

PITTMAN V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - CONSPIRACY - ARMED ROBBERY - To establish conspiracy to commit armed robbery, the State must prove beyond a reasonable doubt that the defendant agreed with one or more persons to commit an armed robbery

CRIMINAL LAW - CONSPIRACY - EVIDENCE - Once the existence of a conspiracy is shown, only slight evidence is required to connect a particular defendant with the conspiracy

CRIMINAL LAW - ARMED ROBBERY - ACCESSORY - An accessory to armed robbery is just as guilty as the principal

FACTS

At the age of fourteen, Davian Grady was befriended by a twenty-three-year-old man, Corey Pittman, who lived up the street from him. On a Friday night, the two went to a basketball game in McComb, but, at some point, left the game and headed to Liberty in Pittman's vehicle. At the direction of Pittman, Grady robbed a Dollar General, using a pair of gloves, mask, sunglasses and a semi-automatic SKS assault rifle that Pittman gave him. After Grady completed the crime, he escaped with \$1,000 in dollar bills, however, Pittman he had left him. After hiding and waiting for about two hours, Grady abandoned the money and supplies, and ultimately ended up at a restaurant where he called Pittman. Pittman picked up Grady but abandoned him on the side of the road when he saw police lights. As Grady was walking alone on the road, an officer noticed that he fit the description of the person who robbed the store and, as a result, arrested him. Grady admitted to his involvement in the robbery, and told the officer that Pittman encouraged him to rob the store. Grady's narrative of Pittman's involvement was corroborated and confirmed by an investigating officer. As a result, Pittman was charged and convicted of armed robbery and conspiracy. Pittman denied any involvement in the robbery and testified that he was at home during the night of the robbery and that he did not own a car that fit the description of the get-a-way car involved. Pittman's brother and mother corroborated his testimony. A jury found Pittman guilty. Pittman appealed.

ISSUES

Whether the court erred in convicting Pittman of (1) conspiracy and (2) armed robbery.

HOLDING

(1) Because the circumstantial evidence alone was sufficient to prove the existence of a conspiracy and only slight corroboration of an accomplice's testimony was required to sustain a conviction, there was enough evidence to sustain

a conviction of conspiracy. (2) Because an accessory to an armed robbery is just as guilty as the principal, because it was uncontested that Grady robbed the Dollar General, and because the evidence also showed that Pittman conspired with Grady to rob it, the conviction of armed robbery was properly sustained. Therefore, the Court of Appeals affirmed the judgment of the Amite County Circuit Court.

Affirmed - 2020-KA-00159-COA (Apr. 6, 2021)

Opinion by Judge McCarty

Hon. Debra W. Blackwell (Amite County Circuit Court)

George T. Holmes (Pub. Def. Office) for Appellant - Lauren Gabrielle Cantrell & Ronnie Lee Harper (Att’y Gen. Office) for Appellee

Briefed by [Allison Payne](#)

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