

MISSISSIPPI SUPREME COURT DECISIONS – JUNE 24, 2021***SUPREME COURT - CIVIL CASES*****BD. OF SUPERVISORS OF HANCOCK CTY. V. RAZZ HALILI TRUST****CIVIL - STATE BOARDS & AGENCIES**

STATE BOARDS & AGENCIES - ZONING DECISIONS - AFFIRMATION - Appellate courts will affirm a board's zoning decision unless it is clearly arbitrary, capricious, discriminatory, illegal, or without a substantial evidentiary basis

STATE BOARDS & AGENCIES - ZONING DECISIONS - REVERSAL - When a board's zoning decision is fairly debatable, the appellate courts will not reverse it

STATE BOARDS & AGENCIES - ZONING DECISIONS - EVIDENCE - When examining whether substantial evidence supports a zoning decision, the court must also ask if there is such relevant evidence as reasonable minds might accept as adequate to support a conclusion

FACTS

In 2015, Razz Halili Trust d/b/a Prestige Oysters ("Trust") purchased a piece of property on the Mississippi Gulf Coast in Hancock County. In November 2018, The Trust applied for site-plan approval for a marina at the same location. The application provided that the proposed marina would include docking and servicing for boats to include the loading and unloading of goods, material, and seafood in a manner consistent with surrounding approved sites. The application also stated that the site would not include the processing of seafood or the wholesale retail of any seafood at the location. The property was located in Zone C-4 where use of property as a marina was allowed as a matter of right by the Hancock County Zoning Ordinance. The Ordinance defined a marina as a boat basin, harbor or dock, with facilities for berthing and servicing boats, including bait and fishing tackle and eating establishments. The Hancock County Planning and Zoning Commission unanimously recommended approval for the site-plan application on January 3, 2019. The Hancock Board of Supervisors ("Board") initially reviewed the application and Commission's recommendation on January 22, 2019 but tabled substantive discussions until February 4, 2019. At the February 4 meeting, board members expressed concerns regarding whether the proposed uses were prohibited or fell within the Ordinance's definition of "marina." The Board failed to reach a decision and deferred the decision until February 19, 2019. At the February 19 meeting, the Board heard oral argument from the Trust explaining that it only planned to unload oysters at the site. The Board unanimously rejected the Trust's application based upon Miss. Code Ann. § 49-15-28(2)'s definition of "seafood processor." The Trust appealed the decision to the Hancock County Circuit Court. The circuit court entered a written judgment, holding that none of the evidence supported the Board's conclusion that the property in question was to be used for seafood processing. Therefore, the circuit court reversed the Board's decision and approved the Trust's application. The Board appealed.

ISSUES

Whether the Board's (1) reliance on Miss. Code Ann. § 49-15-28(2) was fair and reasonable and (2) decision was fair and reasonable.

HOLDING

(1) Because nothing in the Board record suggested that the Trust intended to perform any tasks other than shipping and unloading oysters at the site, and because there was no evidence to indicate that the Trust intended to process raw oysters at the site, the Trust's status under Miss. Code Ann. § 49-15-28(2) was irrelevant to the question of whether the Trust was a processing site or not. (2) Because the Board ignored the definition of "marina" in its own statutes, because the Board misunderstood the facts of the case, because the Board failed to apply the facts to the controlling ordinance,

and because no evidence supported the Board's conclusion that the Trust applied for a processing use rather than a marina, the Board's decision was arbitrary, capricious, and unsupported by substantial evidence. Therefore, the Supreme Court affirmed the judgment of the Hancock County Circuit Court.

CONCURRENCE IN PART & IN RESULT

Presiding Justice Kitchens agreed with the majority's opinion that the Board's decision was arbitrary and capricious but argued that the Court should not give deference to a local board's interpretation of a local ordinance.

DISSENTS

Justice Coleman argued that the ordinance-based definition of "marina" was by itself enough to conclude that the Board did not act arbitrarily in determining that the proposed seafood unloading did not belong in a marina. He also argued that when determining if unloading seafood from boats to start the process of preparing it for sale was appropriate in C-4, the definition of the word "process" was broad enough that the Board's decision was not arbitrary.

Justice Maxwell argued that the issue in the case was whether or not the Board's interpretation of its own ordinance was manifestly unreasonable. He argued that since the Ordinance did not define the term "processing uses," then the Board's decision was reasonable because it used state statutory law to interpret the undefined term. He also urged the Court to refrain from stepping into local board decisions and give greater weight to the Board's definition of "seafood processor" in its own statute.

Affirmed - 2020-CC-00397-SCT (June 24, 2021)

En Banc Opinion by Justice Chamberlin - Concurrence In Part & In Result by Presiding Justice Kitchens - Dissents by Justice Coleman & Justice Maxwell

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

Gary M. Yarborough Jr. for Appellant - Virgil G. Gillespie for Appellee

Briefed by [Jacob D. Hamm](#)

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CITY OF GRENADA V. MISS. DEP'T OF EMP. SEC.

CIVIL - STATE BOARDS & AGENCIES

EMPLOYMENT LAW - UNEMPLOYMENT BENEFITS - DISQUALIFICATION - Miss. Code Ann. § 71-5-513(A)(1)(b) states that a person is disqualified from receiving unemployment benefits if the person was discharged for misconduct connected with his work, if so, found by the department

EMPLOYMENT LAW - UNEMPLOYMENT BENEFITS - MISCONDUCT - Mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, or inadvertences and ordinary negligence in isolated incidents, and good faith errors in judgment or discretion are not considered "misconduct" within the meaning of Mississippi's unemployment compensation statute

EMPLOYMENT LAW - SECURITY LAW - PURPOSE - The purpose of Mississippi's employment security law is to protect those workers not permitted to continue employment through no fault of their own

FACTS

Stefan Sanders was a police officer for the Grenada Police Department. While off duty, Sanders called 911, asking fellow police officers to come to his residence. Grenada officers responded to his home and found Sanders in the presence of a young woman he had been seeing. Sanders told the officers the young woman had suffered a stroke and when she awoke, she had been gifted with extraordinary powers including the ability to do mass calculations in her head. Sanders told the officers that her extraordinary powers attracted the attention of government agents who placed a probe in the back of her head. Sanders believed the government was going to cause the young woman to disappear and he called the officers because he did not want to be blamed for her disappearance. Following the incident, Sanders was placed on administrative leave until he could undergo a psychological examination to determine whether he was fit for duty. Dr. Wayne Lancaster reported Sanders suffered from delusion disorder and recommended medication and therapy. Dr.

Lancaster's report also indicated Sanders posed a risk to his duties as a front-line police officer. Sanders was provided an opportunity to rebut the report with a second opinion, but he did not believe he needed further medical evaluation. Sanders did not provide a medical rebuttal to Dr. Lancaster's report, but provided his own written statement as a rebuttal. Sanders was terminated from his employment and filed for unemployment benefits, which were denied. Sanders appealed to the Administrative Law Judge ("ALJ"). The ALJ affirmed the denial, finding that Sanders had the ability to meet fitness standards within his control by seeking a second opinion, but he chose not to do so. Sanders appealed the decision to the Board of Review which reversed the ALJ's decision and found Sanders's mental health was outside the control of himself and was not considered misconduct connected with work. The City of Grenada appealed to the circuit court which affirmed the Board of Review's decision. The City appealed.

ISSUES

Whether (1) Sanders's failure to rebut the examination findings constitutes misconduct as a matter of law and (2) the trial court erred by not reversing the decision of the Board of Appeals and reinstating the ALJ's decision.

HOLDING

(1) Because the Legislature did not see fit to expand or augment the definition of misconduct as used in the unemployment-compensation statute, the fact that Sanders had been diagnosed with a mental disorder that made him mentally unfit for duty as a police officer did not constitute misconduct on his part, nor did the fact that Sanders failed to obtain a second opinion to rebut his mental diagnosis. (2) Because the record did not indicate or suggest that the City's decision would have been different had Sanders obtained a second opinion confirming Dr. Lancaster's diagnosis, and because no evidence was presented to refute the Board of Review's finding that Sanders's mental condition was the result of anything other than circumstances outside Sanders's control, substantial evidence supported Sanders was entitled to unemployment benefits. Therefore, the Supreme Court affirmed the judgment of the Grenada County Circuit Court.

Affirmed - 2020-CC-00446-SCT (June 24, 2021)

Opinion by Justice Beam

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

Gregory Todd Butler & Mallory Kaye Bland for Appellant - Albert B. White & *Pro se* for Appellees

Briefed by [Lynette Potter](#)

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SUPREME COURT - ORDERS

IN RE RULES OF PROF'L CONDUCT

ORDER

ORDER

This en banc Order by the Supreme Court, made in consideration of the Court's own motion, amended Rule 5.5 of the Mississippi Rules of Professional Conduct. This amendment to the Rules becomes effective July 1, 2021.

Exhibit A, referenced and attached to the Order, shows the amendments to Rule 5.5.

Ordered - 89-R-99018-SCT (June 18, 2021)

En Banc Order by Presiding Justice King

Briefed by [Ashley Pruitt](#)

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SUPREME COURT - CRIMINAL CASES

BURFORD V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - INVOLUNTARY CONFESSION - ADMISSIBILITY - Under *Manix*, a confession that is the result of threat, inducements, or promises, however slight, is not voluntary and is inadmissible under the constitutional standards

CRIMINAL PROCEDURE - INVOLUNTARY CONFESSION - SUFFICIENT INDUCEMENT - Under *Robinson*, the test of whether an inducement is sufficient to render a confession involuntary is whether the promise or inducement is of a nature calculated under the circumstances to induce a confession irrespective of its truth or falsity

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

FACTS

After a jury trial, Cynthia Burford was convicted of burglary of a dwelling and sentenced to serve fifteen years in the custody of Mississippi Department of Corrections. During Burford's post-arrest interrogation, Clarke County Sheriff's Deputy Eric O'Neil, Deputy Blake Bonner, and case manager Sheila Johnson made several threats regarding the potential permanent loss of her children, promises of obtaining the "lowest bond possible" if she cooperated, and threats to ensure she received the maximum sentence possible if she did not cooperate. Following this series of exchanges, Burford admitted to being an accomplice to burglary. The interrogation was recorded on multiple DVDs and two were admitted into evidence without objection from Burford's defense counsel. At trial, the jury was shown the first DVD, which did not contain her confession. The prosecutor then realized the second DVD was a duplicate of the first and moved to substitute a third DVD, which contained Burford's confession. The trial court permitted the State to do so, and Burford's defense counsel objected on the ground that the confession was involuntary. Additionally, Deputy O'Neil testified at trial that he had made multiple promises to Burford. The Court of Appeals affirmed Burford's conviction and declined to review her argument that she had received ineffective assistance of counsel due to defense counsel making an untimely motion to suppress her confession. Burford petitioned for writ of certiorari.

ISSUES

Whether (1) Burford's counsel rendered deficient performance and (2) Burford suffered prejudice.

HOLDING

(1) Because the video of Burford's confession showed that a peace officer made several threats and promises to Burford, and because the officer acknowledged during his trial testimony that he made the threats and promises in an effort to induce Burford's confession, Burford's counsel rendered deficient performance by failing to make a timely motion to suppress the video confession and the subsequent written confession. (2) Because, but for the admission of Burford's confessions, the State's only evidence of her guilt of burglary was that the stolen items were found at her residence and in a car registered to her relative, a reasonable probability existed that the trial court would have granted a timely motion to suppress the confessions and, therefore, Burford was prejudiced. Therefore, the Supreme Court reversed and remanded the judgment of the Clarke County Circuit Court.

DISSENT

Chief Justice Randolph argued that no reasonable probability existed that the trial outcome would have been different because the elements of burglary were met by Burford's testimony in which she stated she was present during the burglary, assisted with loading items into the vehicle, and unloaded items at her residence. Therefore, the ineffective assistance of counsel should not have been addressed on direct appeal and the judgments of the Court of Appeals and of the Clarke County Circuit Court should have been affirmed.

Reversed & Remanded - 2019-CT-00180-SCT (June 24, 2021)

En Banc Opinion by Presiding Justice Kitchens - Dissent by Chief Justice Randolph
Hon. Charles W. Wright Jr. (Clarke County Circuit Court)
George T. Holmes (Pub. Def. Office) for Appellant - Meta S. Copeland, Ashley L. Sulser, & Barbara Byrd (Att’y Gen. Office) for Appellee
Briefed by [Mackinlee Rogers](#)

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HOLLIS V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - APPEALS - LINDSEY BRIEFS - *Lindsey* sets forth a procedure to govern cases where appellate counsel represents an indigent criminal defendant and does not believe his or her client’s case presents any arguable issues on appeal

CRIMINAL PROCEDURE - APPEALS - LINDSEY BRIEFS - In a *Lindsey* brief, counsel must certify that there are no arguable issues supporting the client’s appeal, and he or she has reached this conclusion after scouring the record thoroughly, specifically examining: (a) the reason for the arrest and the circumstances surrounding arrest; (b) any possible violations of the client’s right to counsel; (c) the entire trial transcript; (d) all rulings of the trial court; (e) possible prosecutorial misconduct; (f) all jury instructions; (g) all exhibits, whether admitted into evidence or not; and (h) possible misapplication of the law in sentencing

FACTS

Mikeal Ray Hollis was convicted of possession of methamphetamine in the Leake County Circuit Court. The drugs at issue were discovered during a safety checkpoint after Hollis was asked to exit his vehicle because his license was expired. During the stop, a detective found what he believed to be marijuana in Hollis’s pocket, and Hollis’s vehicle was subsequently searched, revealing the methamphetamine. Hollis’s appellate counsel found no arguable issues for appeal and filed a brief stating such, pursuant to *Lindsey v. State*. Hollis filed a pro se supplemental brief raising three issues which relied on a singular case citation. He claimed (1) an out-of-court statement was used as testimony against him in violation of the Confrontation Clause, vaguely referring to a report which was mentioned during witness examination but not admitted into evidence; (2) an officer destroyed evidence by not retaining his body camera footage; and (3) there was a conflict between officer testimonies as to who handcuffed him.

ISSUE

Whether Hollis raised an arguable issue for appeal in his supplemental brief.

HOLDING

Because the State did not admit any testimonial statements into evidence, because the issue of spoliation of evidence was not preserved for appeal, and because conflicts in the evidence are for the jury to decide, Hollis did not raise an arguable issue for appeal. Therefore, the Supreme Court affirmed the judgment of the Leake County Circuit Court.

Affirmed - 2019-KA-01624-SCT (June 24, 2021)

Opinion by Presiding Justice Kitchens
Hon. Christopher A. Collins (Leake County Circuit Court)
W. Daniel Hinchcliff & George T. Holmes (Pub. Def. Office) & *Pro se* for Appellant - Ashley L. Sulser (Att’y Gen. Office) for Appellee
Briefed by [Brie Mansoor](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – JUNE 22, 2021

COURT OF APPEALS - CIVIL CASES

BRYANT V. STATE

CRIMINAL - FELONY

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

CRIMINAL LAW - ACCOMPLICE LIABILITY - AIDING AND ABETTING - Aiding and abetting is the offense committed by perpetrators of a crime who, although not the direct perpetrators of a crime, are present at its commission, rendering aid to the actual perpetrator

FACTS

In May 2015, while working a night shift as a security guard, Finnis Cataledge III was shot and killed. Investigators from the Clarksdale Police Department and the Mississippi Bureau of Investigation recovered evidence from the scene and received a tip that three people were involved. Officers subsequently searched Demarcus Bryant's home, finding an AR-15 rifle with accompanying ammunition and magazines. As a result of the investigation, Bryant and two others were indicted for first-degree murder. During the trial, a firearm expert concluded that ten of the twelve casings recovered at the murder scene were shot from Bryant's AR-15. During the jury instruction conference, Bryant objected to jury instructions C-12 and C-14, which were offered in support of the State's theory that Bryant aided and abetted or acted in concert with others. Bryant was found guilty of first-degree murder and sentenced to serve life without eligibility for parole. He was denied a motion for a JNOV or new trial. Bryant appealed.

ISSUE

Whether the trial court erred by allowing the two jury instructions on aiding and abetting.

HOLDING

Because sufficient evidence existed to present the elements of aiding and abetting to the jury, and because the theory of aiding and abetting was not without foundation in the law and was instead an issue within the realm for a jury to decide, the trial court did not err by allowing two jury instructions on aiding and abetting. Therefore, the Court of Appeals affirmed the judgment of the Coahoma County Circuit Court.

Affirmed - 2020-KA-00005-COA (June 22, 2021)

Opinion by Judge Westbrook

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

John Keith Perry Jr. for Appellant - Lauren Gabrielle Cantrell (Att'y Gen. Office) for Appellee

Briefed by [Fatelia Avery](#)

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HIMELIZ V. HOG SLAT, INC.

CIVIL - WORKERS' COMPENSATION

WORKERS' COMPENSATION - RULE PROMULGATION - STATUTORY AUTHORITY - Miss. Code Ann. § 71-3-61(1) grants the Mississippi Workers' Comp. Commission the power to write and enforce its own rules conformable to the law which may be necessary to enable it to effectively discharge the duties of its office

WORKERS' COMPENSATION - SETTLEMENT APPROVAL - HEARING - Miss. Workers' Comp. Comm'n Procedural R. 2.15 does not require a hearing by a commissioner, the full Commission, or an administrative judge

FACTS

Carlos Jorge Himeliz was legally in the United States on a work visa when he sustained a compensable injury that rendered him a quadriplegic during the course and scope of his employment. Himeliz is permanently, totally disabled

and will require medical attention for the rest of his life. His visa expired sometime after his accident, and he is not entitled to any government benefits. Himeliz received a lump-sum payment for all disability benefits to which he was entitled by law. He and his employer, Hog Slat Inc., voluntarily participated in mediation and agreed to a settlement to close out the medical portion of his claim. The parties jointly submitted a petition for approval of a settlement agreement to the Mississippi Workers' Compensation Commission ("Commission") for approval, but the petition was denied pursuant to Miss. Workers' Comp. Comm'n Procedural R. 2.15 ("Rule 2.15"). Himeliz's counsel requested a full Commission review of the proposed settlement. A staff attorney replied that neither the Commission's rules nor a Mississippi statute provided procedure for requesting a full Commission review of a proposed settlement. Regardless, the full Commission found that the settlement was not in Himeliz's best interest pursuant to Rule 2.15. Himeliz appealed.

ISSUES

Whether the Commission (1) erred in not holding a hearing on the 9(i)-settlement petition and (2) based their denial of the settlement petition on substantial evidence.

HOLDING

(1) Because Miss. Code Ann. § 71-3-61(1) granted the Commission the power to write and enforce its own rules, and because Rule 2.15 does not require a hearing, the Commission did not err in not holding a hearing on the 9(i)-settlement petition. (2) Because the Commission did not believe future medical expenses were properly calculated, because Himeliz had no adequate support system, and because the settlement did not provide for a translator, the Commission's denial was based on substantial evidence. Therefore, the Court of Appeals affirmed the judgment of the Mississippi Workers' Compensation Commission.

CONCURRENCE IN RESULT

Judge Greenlee, concurring in result only, expressed concern that there is no procedure for the request of a hearing before the full Commission when a proffered settlement is rejected by a single Commissioner. He argued that the Commission should address the discrepancy in its procedural rules to provide for the hearing required by Miss. Code Ann. § 71-3-47, which states, "[t]he commission... upon application of either party or upon its own initiative, shall order a hearing."

Affirmed - 2020-WC-00417-COA (June 22, 2021)

Opinion by Judge Westbrook - Concurrence In Result by Judge Greenlee

Mississippi Workers' Compensation Commission

Lindsay Erin Varnadoe for Appellant - M. Reed Martz for Appellees

Briefed by [William "Jack" Simpson](#)

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JOHNSON V. ADAMS CTY.

CIVIL - EMINENT DOMAIN

CIVIL PROCEDURE - EMINENT DOMAIN - FINAL ORDER - Pursuant to Miss. Code § 11-27-29(1), every party shall have the right to appeal directly to the Supreme Court from the judgment entered in the special court of eminent domain, whether tried in county court or circuit court, by giving notice within ten days from the date of the judgment or final order entered by the court to the court reporter

CIVIL PROCEDURE - EMINENT DOMAIN - MOTION TO DISMISS - Pursuant to Miss. Code § 11-27-15, any party may appeal directly to the Supreme Court from an order overruling or granting any such motion to dismiss in eminent domain cases

CIVIL PROCEDURE - APPEALS - INTERLOCUTORY ORDER - The Court of Appeals cannot hear appeals of interlocutory orders unless the appellant has sought and received authority for an interlocutory appeal from the Supreme Court pursuant to Miss. R. of App. P. 5(a)

FACTS

In November 2018, the Adams County Board of Supervisors approved a “quick take” eminent domain resolution against Timothy & Carolyn Johnson to widen Morgantown Road. Soon after the resolution was approved, the county filed the quick take complaint, seeking a permanent and subsequent temporary taking. The Johnsons responded to the complaint first with a letter in January 2019, requesting an appraisal of the property and compensation for the taking, and then filed a formal answer in May 2019. At trial in June 2019, James Gray, an elected supervisor of Adams County, testified that the goal of the project was to widen Morgantown Road because it was “one of the most dangerous roads in Adams County.” However, Gray testified that the initial goal to create a third lane was dropped after further consideration, and the board of supervisors decided to focus on fixing the drainage issues on the road, which only required a temporary taking of the Johnsons’ property. After hearing the testimony, the court granted the quick take order but decided to assess damages in a following trial. The Johnsons appealed.

ISSUES

Whether the (1) quick take order was a final and appealable order; (2) Johnsons properly filed a motion to dismiss; and (3) Johnsons filed a petition for interlocutory review pursuant to Miss. R. App. P. 5(a).

HOLDING

(1) Because the order only ruled on the quick take procedure and did not assess damages, the quick take order was not a final and appealable order. (2) Because the Johnsons failed to file a motion to dismiss under Miss. Code § 11-27-15, the Johnsons did not file a proper motion. (3) Because the Johnsons’ appeal was not made pursuant to Miss. R. App. P. 5 nor was it made within the twenty-one days of the quick take order, the Johnsons did not receive permission to appeal an interlocutory issue from the Supreme Court. Therefore, the Court of Appeals dismissed the Johnsons’ appeal from the Adams County County Court.

Appeal Dismissed - 2019-CA-01554-COA (June 22, 2021)

Opinion by Presiding Judge Carlton

Hon. Walter Jeffrey Brown (Adams County County Court)

Joseph Bilbo Moffett for Appellants - Scott Fletcher Slover for Appellee

Briefed by [John Michael Sweatt](#)

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SANDERS V. ATTALA CTY.

CIVIL - STATE BOARDS & AGENCIES

CIVIL PROCEDURE - MOTION PRACTICE - SUMMARY JUDGMENT - Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, show that there is no genuine issue as to any material fact, and the evidence must be viewed in the light most favorable to the non-moving party and the moving party is entitled to a judgment as a matter of law

MISS. TORT CLAIMS ACT - GOVERNMENTAL ENTITY - LAW ENFORCEMENT IMMUNITY - Under the Miss. Tort Claims Act, a governmental entity and its employees acting within the court and scope of their employment or duties shall not be liable for any claim arising out of any act or omission of an employee of a governmental entity engaged in the performance or execution of duties or activities relating to police or fire protection unless the employee acted in reckless disregard of the safety and well-being of any person not engaged in criminal activity at the time of injury

MISS. TORT CLAIMS ACT - GOVERNMENTAL ENTITY - DISCRETIONARY FUNCTION IMMUNITY - Under the Miss. Tort Claims Act, a governmental entity and its employees acting within the course and scope of their employment or duties shall not be liable for any claim based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a governmental entity or employee thereof, whether or not the discretion be abused

MISS. TORT CLAIMS ACT - GOVERNMENTAL ENTITY - WEATHER IMMUNITY - Under the Miss. Tort Claims Act, a governmental employee acting within the scope and duty of his or her employment duties is immune from claims arising out of an injury caused solely by the effect of weather conditions on the use of streets and highways

FACTS

Around midnight one evening, two Attala County Sheriff's Department deputies, Scott Walters and Edward Fleming, were called to a residence due to a disturbance between an intoxicated Sharon Sanders and the property owner. The deputies offered Sanders a courtesy ride to meet her brother down Highway 19. With Deputy Walters leading in one car and Deputy Fleming and Sanders following him in a second car, the vehicles traveled in heavy rain to their destination. Deputy Walters hit a heavy spot of rain, briefly hydroplaned, and regained control, however, Deputy Fleming hit the same spot, hydroplaned, and crashed into trees. Although Deputy Fleming blacked out and regained consciousness, Sanders did not regain consciousness until she was in the emergency room with injuries to her head, face, and jaw. A trooper's report listed the road as dark, unlit, and wet; the speed limit was fifty-five miles per hour. Both deputies testified that they had been traveling sixty-one to sixty-five miles per hour. Sanders filed a claim against Attala County under the Miss. Tort Claims Act ("MTCA") for injuries due to Deputy Fleming's alleged recklessness. Attala County moved to dismiss Sanders's complaint based on law enforcement immunity, discretionary immunity, and weather immunity. Sanders responded, attaching the affidavit of Robert C. Willis, an expert who claimed Deputy Fleming acted with wanton and reckless disregard for Sanders's safety. The Attala County Circuit Court heard arguments from both parties, granted summary judgment in Attala County's favor, and dismissed Sanders's complaint with prejudice. Sanders appealed.

ISSUE

Whether the circuit court erred by granting summary judgment in Attala County's favor.

HOLDING

Because Sanders established a genuine issue of material fact, because Attala County was not entitled to discretionary function immunity, because weather conditions were not a sole cause of Sanders's injuries, and because Willis's expert opinion should have been considered, Attala County was not entitled to summary judgment. Therefore, the Court of Appeals reversed and remanded the judgment of the Attala County Circuit Court.

DISSENT

Presiding Judge Wilson argued that the trial court properly granted summary judgment in favor of Attala County because the evidence supported, at most, a finding that Deputy Fleming was negligent by driving over the speed limit and did not support a finding that he acted with reckless disregard. He argued that driving 10 mph above the speed limit may be negligent in some circumstances, but it does not rise to the level of reckless disregard and there was no evidence that Fleming recognized and deliberately disregarded an unreasonable risk and a high probability of harm. Additionally, he argued that because Fleming was in the same car as Sanders and subject to the same risks, in order to find that Fleming acted with reckless disregard, one would have to believe that he deliberately subjected himself to an unreasonable risk and high probability of harm to himself. Because he believed there was no evidence to support such a finding, the circuit court properly granted summary judgment in favor of Attala County. Further, because law enforcement immunity was enough to grant the court's judgment, he did not address other immunities.

Reversed & Remanded - 2020-CA-00175-COA (June 22, 2021)

En Banc Opinion by Presiding Judge Carlton - Dissent by Presiding Judge Wilson

Hon. George M. Mitchell Jr. (Attala County Circuit Court)

Adam Holt Johnson for Appellant - Daniel Judson Griffith & Bethany Ann Tarpley for Appellee

Briefed by [Rod Bridges](#)

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CIVIL - POST-CONVICTION RELIEF

CIVIL PROCEDURE - GUILTY PLEA - VOLUNTARINESS - For a guilty plea to be voluntary, knowing, and intelligent, the defendant must understand their rights, the nature of the charge against them, and the consequences of their plea

SENTENCING - FELONY - HABITUAL OFFENDER - Miss. Code Ann. § 99-19-83 provides that every person convicted of a felony who shall have been convicted twice previously of any felony upon charges separately brought and arising out of separate incidents at different times and who shall have been sentenced to and served separate terms of one year or more in any state and/or federal penal institution and where any one of such felonies shall have been a crime of violence shall be sentenced to life imprisonment, and such sentence shall not be reduced or suspended nor shall such person be eligible for parole or probation

CIVIL PROCEDURE - PROSECUTORIAL MISCONDUCT - OBJECTION - Failure to make a contemporaneous objection to a prosecutor's remarks at trial bars consideration of prosecutorial misconduct allegations on appeal

CIVIL 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

FACTS

In May 2018, Jerry Willis poured gasoline on his girlfriend, set her on fire, and drove away in her vehicle. He subsequently pled guilty to attempted murder, kidnapping, and taking possession of or taking away a motor vehicle. He also pled guilty to being a violent habitual offender pursuant to Miss. Code Ann. § 99-19-83. For the convictions of attempted murder and kidnapping, the trial court sentenced Willis to life without parole in the custody of the Mississippi Department of Corrections ("MDOC"). For stealing the vehicle, the trial court sentenced Willis to five years without parole, probation, or early release. In February 2020, Willis filed a post-conviction relief ("PCR") motion. The trial court denied the motion. Willis appealed.

ISSUES

Whether the trial court erred in denying post-conviction relief for (1) involuntary plea; (2) insufficient proof to support for violent habitual offender; (3) prosecutorial misconduct; and (4) ineffective assistance of counsel.

HOLDING

(1) Because Willis was fully advised of the nature and consequences of the plea and the applicable sentence, his plea was voluntarily given. (2) Because Willis admitted to his prior criminal convictions, he was properly classified as a violent habitual offender. (3) Because Willis qualified as a violent habitual offender and understood that he would be sentenced as a violent habitual offender to life without parole, he was not prejudiced by the prosecutor's misstatements about the potential sentence for kidnapping. (4) Because Willis did not produce any proof to support his claim of ineffective assistance of counsel, the trial court did not err in dismissing his motion without an evidentiary hearing. Therefore, the Court of Appeals affirmed the judgment of the Pearl River County Circuit Court.

DISSENT

Judge Westbrook argued that Willis did not understand what the maximum possible sentence could be nor did he understand the effect of pleading as a habitual offender. Therefore, Willis's guilty plea was involuntary.

Affirmed - 2020-CA-00550-COA (June 22, 2021)

En Banc Opinion by Judge Greenlee - Dissent by Judge Westbrook

Hon. Anthony Alan Mozingo (Pearl River County Circuit Court)

John Samuel Grant IV for Appellant - Brittney Sharae Eakins (Att'y Gen. Office) for Appellee

Briefed by [MaryScott Polk](#)

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COURT OF APPEALS - POST-CONVICTION RELIEF

FRANKS V. STATE

CIVIL - POST-CONVICTION RELIEF

CRIMINAL PROCEDURE - ALFORD PLEA - VOLUNTARY CONSENT - In an *Alford* plea, an individual accused of a crime may voluntarily, knowingly, and understandably consent to a prison sentence even if they are unwilling or unable to admit their participation in the alleged acts

CRIMINAL PROCEDURE - ALFORD PLEA - FACTUAL BASIS - In the context of an *Alford* plea, although admission of guilt is not essential for a valid guilty plea, a factual basis is an essential part of the constitutionally valid and enforceable decision to plead guilty

CRIMINAL PROCEDURE - GUILTY PLEA - ESTABLISHING A FACTUAL BASIS - In addition to the many ways to establish a factual basis for a guilty plea, a sufficiently specific indictment can be used as the sole source of the factual basis for a guilty plea

CIVIL PROCEDURE - POST-CONVICTION RELIEF - NEWLY DISCOVERED EVIDENCE - Miss. Code Ann. § 99-39-5(1)(e) provides that a petitioner may seek relief through a post-conviction relief motion when there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice; evidence that could have been discovered before trial by the exercise of due diligence does not meet the requirements of newly discovered evidence

FACTS

Christopher Franks and two co-defendants were indicted for capital murder after the victim died from an overdose of a lethal substance administered by injection. After one of his co-defendants, Trudy Ponder, implicated Franks in a statement given to law enforcement, Franks entered an *Alford* plea to second-degree murder. Franks was sentenced to twenty-five years. Nine months after Franks entered his guilty plea, Ponder sent a letter to Franks's attorney claiming she had been coerced into giving her statement to law enforcement. In the letter, Ponder stated that she implicated Franks because the district attorney promised to help get her son and her out of trouble. Franks filed a motion for post-conviction relief claiming his plea was involuntary, there was no factual basis to support the charge against him, and he had newly discovered evidence that Ponder had lied to law enforcement. Franks attached Ponder's letter to the motion, although he did not obtain a sworn affidavit from Ponder due to concerns that contacting her may have jeopardized the proceeding. Finding no merit in Franks's claims of error, the trial court denied the motion. Franks appealed.

ISSUES

Whether the trial court erred in (1) determining Franks's plea was knowingly, intelligently, and voluntarily given; (2) finding that a factual basis for Franks's plea was established; and (3) determining the newly discovered evidence Franks provided did not warrant an evidentiary hearing.

HOLDING

(1) Because nothing in the record suggested that Franks was misinformed or coerced into pleading guilty, and because the trial court appraised Franks of the charges against him, his constitutional rights, and the consequences of his plea, the trial court did not err in determining Franks's plea was knowingly, intelligently, and voluntarily given. (2) Because the State's recitation of facts established an adequate factual basis for the plea, and because Franks immediately recanted his initial disagreement with the facts presented, the trial court did not err in finding that a factual basis for the guilty plea was established. (3) Because, in consideration of the record, the evidence presented by Franks did not meet the requirements of newly discovered evidence and did not contain material facts requiring vacation of the conviction or sentence in the interest of justice, the trial court did not err in determining that the evidence did not warrant an evidentiary hearing. Therefore, the Court of Appeals affirmed the judgment of the Washington County Circuit Court.

Affirmed - 2020-CP-00041-COA (June 22, 2021)

Opinion by Chief Judge Barnes

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THAYER V. STATE

CIVIL - POST-CONVICTION RELIEF

CRIMINAL LAW - PROBATION REVOCATION - TECHNICAL VIOLATION CENTER - Pursuant to Miss. Code Ann. § 47-7-37(5)(a), if the court revokes probation for one or more technical violations, the court shall impose a period of imprisonment to be served in either a technical violation center or a restitution center not to exceed ninety days for the first revocation and not to exceed one-hundred twenty days for the second revocation; for the third revocation, the court may impose a period of imprisonment to be served in either a technical violation center or a restitution center for up to one-hundred eighty days or may impose the remainder of the suspended portion of the sentence

CRIMINAL LAW - PROBATION REVOCATION - SENTENCING - Pursuant to Miss. Code Ann. § 47-4-37.1, if a court finds by a preponderance of the evidence that a probationer or a person under post-release supervision has committed a felony or absconded, the court may revoke his probation and impose any or all of the sentence; for purposes of this section, “absconding from supervision” means the failure of a probationer to report to his supervising officer for six or more consecutive months

CRIMINAL LAW - RIGHT TO COUNSEL - PROBATIONERS - A probationer is not always entitled to counsel at a revocation hearing; the question of whether a probationer is entitled to appointed counsel must be answered on a case-by-case-basis; when the issues relevant to the hearing are complex or difficult to develop, then the court should appoint counsel for the defendant

FACTS

Keith Thayer pled guilty to burglary of a dwelling and simple assault on a law enforcement officer. Thayer was sentenced to twenty-five years, with twenty years suspended. Thayer served five years in the custody of Mississippi Department of Corrections (“MDOC”) and was placed on post-release supervision (“PRS”) for five years after his release. As a part of his PRS, Thayer had to comply with several terms and conditions. However, Thayer violated these conditions by failing to report to the MDOC, pay his monthly fees, attend a rehabilitation program, and permit an officer to visit his home. As a consequence, Thayer was arrested. The State filed a petition to revoke Thayer’s PRS and impose his suspended sentence. After a revocation hearing, the trial court revoked Thayer’s PRS. Thayer was sentenced to serve five years in the custody of MDOC as well as PRS for five years after his release. Thayer filed a petition to correct the revoked PRS, arguing that he should be sentenced to a maximum of ninety days and housed at a technical-violation center (“TVC”) since this was his first technical violation. The trial court denied Thayer’s motion, stating that it was within its discretion to revoke Thayer’s probation and impose any and all of the suspended sentence. Thayer appealed.

ISSUES

Whether the trial court erred in (1) sentencing him to serve five years in the custody of MDOC; (2) denying his request for a court-appointed attorney; and (3) revoking his PRS when he did not commit a felony.

HOLDING

(1) Because Thayer failed to report to his field officer for over six months, he absconded from supervision, therefore, the court did not err in sentencing Thayer to serve five years. (2) Because probationers are not always entitled to counsel at a revocation hearing unless the issues relevant to the hearing are complex or difficult, Thayer was not entitled to a court-appointed attorney, thus, the trial court did not err in denying his request for a court-appointed attorney. (3) Because a probationer may have his probation revoked for any violation of the terms and condition of his probation, Thayer did not have to be convicted of a felony for his PRS to be revoked. Therefore, the Court of Appeals affirmed the judgment of the Pontotoc County Circuit Court.

Affirmed - 2020-CP-00413-COA (June 22, 2021)
Opinion by Judge McDonald
Hon. Michael Paul Mills Jr. (Pontotoc County Circuit Court)
Pro se for Appellant - Scott Stuart (Att’y Gen. Office) for Appellee
Briefed by [Allison Payne](#)

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