

MISSISSIPPI SUPREME COURT DECISIONS – SEPTEMBER 8, 2022***SUPREME COURT - ORDERS*****CHATMAN V. STATE****EN BANC ORDER****ORDER**

Lebarron Emon Chatman filed an Application for Post-Conviction Collateral Relief. Chatman was convicted of murder and sentenced to life imprisonment in 2007 and had filed four applications for Post-Conviction Relief since his imprisonment. The Supreme Court held that Chatman’s application for leave was time-barred and barred as a successive application; furthermore, the application did not meet any of the exceptions to those statutes. Notwithstanding the fact that the application was time-barred and barred as a successive application, the Supreme Court also held that the instant filing was without merit and frivolous. The Supreme Court then warned Chatman that future filings deemed frivolous may result not only in monetary sanctions but also in restrictions on filing applications for post-conviction collateral relief in forma pauperis. Therefore, the Supreme Court denied Chatman’s Application for Post-Conviction Collateral Relief.

OBJECTION

Presiding Justice King disagreed with the Court’s warning that Chatman requesting leave may result in additional monetary sanctions or restrictions on filing applications for post-conviction collateral relief in forma pauperis. He argued the imposition of monetary sanctions upon a criminal defendant proceeding in forma pauperis only serves to punish or preclude that defendant from his lawful right to appeal. Therefore, he argued, rather than imposing sanctions and threatening to restrict access to the courts, the Court should simply deny the application.

Denied with Sanctions Warning - 2016-M-00424 (Sept. 1, 2022)

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

Briefed by [Kaehla Outlaw](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – SEPTEMBER 6, 2022***COURT OF APPEALS - CIVIL CASES*****LAUREL SCH. DIST. V. LANIER****CIVIL - STATE BOARDS & AGENCIES**

CIVIL PROCEDURE - JURISDICTION - CHANCERY COURT - A chancery court has original jurisdiction to hear a complaint filed by a licensed school employee if the school district failed to comply with the notice and hearing requirements of the EEPL.

CIVIL PROCEDURE - CLAIMS - MOOTNESS - Claims are not considered moot if the claim is still relevant to a party's future employment ability based on the result of the adjudication of the claim

FACTS

Tito Lanier contended that he was an employee of the Laurel School District ("School District") from 2009 until 2020. In March 2019, Lanier and the School District entered into a contract in which Lanier was designated as a licensed employee for the school year from July 2019 through June 2020. He began the school year as the principal of Laurel Middle School and was reassigned to the position of student support coordinator in October 2019. In May 2020, Lanier received a written notice that he would not be offered a contract for the 2020-2021 school year. Lanier did not sign the notice acknowledging receipt, but wrote on the letter disagreeing and requested a hearing. The School District scheduled the hearing outside of the thirty-day window required by statute, and thus, Lanier filed a motion to dismiss, requesting that he be given a 2020-2021 contract and that the recommendation for nonrenewal be removed from his personnel file. The School District attempted to remedy their noncompliance by sending Lanier a second nonrenewal letter in June 2020 that withdrew the first letter and canceled the scheduled hearing. Lanier's attorney emailed counsel for the school district claiming that Lanier's due process rights had been violated and moved that he be given a contract for the 2020-2021 school year and that the recommendation for nonrenewal be removed from his personnel file. In a response letter, the School District took the position that because Lanier had signed a new contract with Forrest County School District, his claim for a new contract with the School District was moot. The School District also stated that because Lanier did not request a hearing within ten days of the nonrenewal letter, the School District's nonrenewal decision had become final. Lanier filed a complaint seeking a declaratory judgment that he had the right to a hearing pursuant to the Education Employment Procedures Law of 2001 ("EEPL"), that he was entitled to an employment contract for the 2020-2021 school year, and a temporary preliminary and permanent injunction. The School District filed a motion to dismiss for failure to state a claim, arguing that its failure did not require automatic renewal of Lanier's contract and that it had corrected the problem by withdrawing the first nonrenewal letter and issuing a second notice. In February 2021, after hearing arguments, the chancery court made a factual finding that Lanier made a timely request for a hearing to the second nonrenewal letter and that the requested hearing was never scheduled by the School District. The chancery court dismissed the complaint because the administrative remedies had not been exhausted. The chancery court concluded that it could not hear the complaint until after the nonrenewal hearing had been completed, that the request for a temporary injunction had not been timely pursued and therefore was dismissed, and that the of issue permanent injunction was not ready for consideration because the necessary hearing had not been completed. The School District appealed.

ISSUES

Whether (1) the chancery court had jurisdiction to hear a claim regarding Lanier's claims pursuant to the EEPL and Lanier timely requested a hearing on the second nonrenewal letter and (2) Lanier's request for a hearing on his nonrenewal was moot.

HOLDING

(1) Because there was sufficient language that required the School District to conduct a hearing in compliance with the EEPL and Lanier was not given the statutorily required hearing, because the chancery court had original jurisdiction, and because the chancery court's factual findings were supported by the evidence and were not manifestly wrong or clearly erroneous, Lanier's complaint was properly before the chancery court and there was no error in the dismissal of the verified complaint. (2) Because, pursuant to the EEPL, Lanier still had a due process right to challenge the adverse finding that may impact his future employment opportunities, the matter was not moot. Therefore, the Court of Appeals affirmed the judgment of the Jones County Chancery Court.

DISSENT

Judge Westbrook dissented, arguing that the chancery court erred in dismissing Lanier's complaint for him to receive a hearing to exhaust his administrative remedies. She reasoned that by not giving Lanier a timely hearing, the School District violated his due process rights and therefore the chancery court had jurisdiction to analyze Lanier's due process claim. She argued that Lanier exhausted his administrative remedies when he appropriately requested a due process hearing and that remanding the case for an EEPL hearing instead of analyzing Lanier's due process claim allowed the

School District to avoid timely giving Lanier his requested hearing while also avoiding damages or consequences for an alleged due process violation.

Affirmed - 2021-CA-00384-COA (Sept. 6, 2022)

En Banc Opinion by Judge Emfinger - Dissent by Judge Westbrook

Hon. Billie J. Graham (Jones County Chancery Court, Second Judicial Dist.)

John Simeon Hooks & Lindsey Oswald Watson for Appellant - Jason Edward Owens for Appellee

Briefed by [Micah McGaha](#)

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NGUYEN V. BUI

CIVIL - REAL PROPERTY

APPELLATE PROCEDURE - CLAIMS - LEGAL BASIS - Miss. R. App. P. 28(a)(7) requires an appellant's brief to contain the contentions of appellant with respect to the issues presented, and the reasons for those contentions, with citations to the authorities, statutes, and parts of the record relied on

APPELLATE PROCEDURE - APPELLATE REVIEW - SCOPE - The appellate court does not re-evaluate the evidence, re-test the credibility of witnesses, nor otherwise act as a second fact-finder

APPELLATE PROCEDURE - REMEDIES - ATTORNEY'S FEES - A request for appellate attorney's fees must be made in a motion that complies with Miss. R. App. P. 27(a)

FACTS

Ngoc Mai Nguyen owned commercial property in Columbus. In August 2019, Nguyen and Elvis Bui entered into an agreement for the sale and purchase of real estate and lease of the property to Bui. The parties agreed to a sale price of \$175,000, splitting closing costs equally, a closing date on or before November 30, 2020, and a check for \$10,000 from Bui as earnest money. Under the terms, Bui would lease the property for fifteen months, from September 2019 to November 2020. The parties communicated prior to the closing date regarding the amount of proceeds needed at the closing. In November 2020, both Nguyen and Bui met at a law office to close on the property. However, the parties had a disagreement and did not close on the property. Nguyen then sent a notice of expiration of the contract and lease to Bui. Bui filed a complaint for specific performance, a preliminary injunction, and a temporary restraining order against Nguyen. In the complaint, Bui argued that there was a valid contract and that Nguyen was in breach of contract by refusing to proceed with selling the property when Bui attempted to provide the purchase money. After a trial in May 2021, the trial court awarded specific performance of the contract and ordered Nguyen to sell the property and close on the transaction within ten days of the final judgment. Nguyen appealed.

ISSUES

Whether (1) reversal was warranted because the trial court enforced judgment based on out-of-date closing documents before the appeal process was complete; (2) the trial court inadequately considered the evidence and thus improperly found Nguyen responsible for the unfulfilled sale contract; and (3) Bui should have been awarded appellate attorney's fees.

HOLDING

(1) Because Nguyen failed to raise any appealable issue or provide any legal basis to support her claims pursuant to Miss. R. App. P. 28(a)(7), the Court of Appeals declined to address the merits on appeal. (2) Because the record provided evidence that Bui and Nguyen entered into a valid contract, Bui made improvements to the property in reliance on the contract, Bui attempted to deliver the purchase price and Nguyen failed to perform by refusing to sell the property, and Bui remained ready, willing, and able to provide the purchase money and perform his obligations, there was evidence to support the trial court's findings and conclusions. (3) Because appellate attorney's fees should have been made in a motion that complied with Miss. R. App. P. 27(a), the Court of Appeals denied Bui's request for appellate attorney's fees. Therefore, the Court of Appeals affirmed the judgment of the Lowndes County Chancery Court.

Affirmed - 2021-CP-00538-COA (Sept. 6, 2022)

Opinion by Judge Smith

Hon. Joseph N. Studdard (Lowndes County Chancery Court)

Pro se for Appellant - William Thomas Cooper for Appellee

Briefed by [Baylee Howard](#)

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THOMAS V. PUB. EMPS.' RET. SYS. OF MISS.

CIVIL - STATE BOARDS & AGENCIES

ADMINISTRATIVE LAW - APPELLATE REVIEW - SUBSTANTIAL EVIDENCE - Substantial evidence consists of evidence in which reasonable minds might accept as adequate to support a conclusion; to be substantial, the evidence must be something more than a mere scintilla or suspicion

ADMINISTRATIVE LAW - BOARD DECISIONS - ARBITRARY & CAPRICIOUS - A decision is arbitrary when it is not done according to reason and judgment, but depending on the will alone; a decision is capricious if it is made without reason, in a whimsical manner, implying either a lack of understanding of or disregard for the surrounding facts and settled controlling principles

ADMINISTRATIVE LAW - BOARD DECISIONS - DISCRETIONARY AUTHORITY - The authority to request additional existing medical records not previously furnished by the claimant does not require PERS to defer a case to obtain or review every possible record, but instead PERS is granted discretionary authority to request additional records; the burden of producing evidence sufficient to support her claim rests on the claimant, not PERS

FACTS

Bobbie Thomas, a bus aide for Jackson Public Schools (“JPS”), monitored and assisted special needs children riding the school bus. In 2014, Thomas was assisting a child that had gotten out of their seat when she fell and hit her head. Thomas was taken to the emergency room where extensive tests were conducted, but none revealed any significant injury. Thomas continued to experience headaches, dizziness, and loss of balance and applied for Public Employees’ Retirement System of Mississippi (“PERS”) duty-related disability benefits in 2016. Thomas stated that she was unable to return to work following the 2014 incident. Thomas was examined by Dr. Jimmy Wolfe, who diagnosed Thomas with migraine variant and post-concussive syndrome. Dr. Wolfe also noted it was unlikely that Thomas’s symptoms would improve with time and that she had trouble staying focused on a task, but she had no restrictions from a neurological standpoint. Furthermore, Dr. Edward Manning, a psychologist, suggested Thomas receive continual medical care and psychological treatment for her symptoms. However, the PERS Medical Board (“Medical Board”) requested Thomas be examined by an independent psychologist, Dr. Criss Lott, and a psychiatrist, Dr. Philip Blount. After being examined by Dr. Lott, he concluded that Thomas was exaggerating her problems and that her problems were amenable to treatment. Dr. Blount found that Thomas had a normal neurologic exam and that her pre-existing back pain did not change since the injury. The Medical Board asked Dr. Lott whether he believed Thomas was disabled, to which Dr. Lott stated he could not provide a definitive answer, but rather reemphasized his prior statement that Thomas was exaggerating her injury and that her condition was amenable to treatment. In February 2017, Thomas was denied duty-related disability benefits. The Medical Board found that Thomas produced insufficient objective medical evidence in support of her claim that her condition prevented her from performing her duties as a bus aide. Thomas appealed the denial to the PERS Disability Appeals Committee (“Appeals Committee”), where Thomas testified that due to her headaches, dizziness, balance issues, and seeing stars, she could not return to work. She stated, among other things, that she was concerned about harming herself or a student. The Appeals Committee recommended that the PERS Board of Trustees (“Board of Trustees”) deny Thomas’s claim, finding that Thomas produced insufficient objective medical evidence to establish that she was unable to perform her duties as a bus aide. The Board of Trustees subsequently denied Thomas’s claim. The circuit court affirmed the Board of Trustees’ decision. Thomas appealed.

ISSUES

Whether (1) the Board of Trustees' decision was supported by substantial evidence and was not arbitrary or capricious and (2) the Board of Trustees was required to seek out additional records from the Social Security Administration.

HOLDING

(1) Because Thomas's complaints about her injuries were subjective and largely not supported by the objective medical evidence, because Thomas underwent CT scans and an MRI of her head, back, and brain on the day she fell, because neurological exams showed that Thomas had no restrictions from a physical medicine standpoint, because, although Thomas was diagnosed with a migraine variant, Thomas was found not to be totally disabled from her job as a bus aide, because some of Thomas's complaints predated her fall at work, and because there was no direct evidence regarding Thomas's ability to perform her duties due to not reporting back to work after the accident, the Board of Trustees' decision to deny Thomas's duty-related disability benefits was supported by substantial evidence and was not arbitrary or capricious. (2) Because Thomas had the burden of providing evidence necessary for her claim, neither the Appeals Committee nor the Board of Trustees was under an obligation to search for additional records that might have supported Thomas's claim. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Circuit Court.

Affirmed - 2021-SA-00375-COA (Sept. 6, 2022)

Opinion by Presiding Judge Wilson

Hon. Isadore W. Patrick Jr. (Hinds County Circuit Court, First Judicial Dist.)

George S. Luter for Appellant - Amelia Bartlett Gamble (Att'y Gen. Office) for Appellee

Briefed by [Sierra Albano](#)

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WILSON V. CITY OF GREENVILLE

CIVIL - STATE BOARDS & AGENCIES

CIVIL PROCEDURE - JURISDICTION - APPEAL FROM MUNICIPAL AUTHORITIES - Under Miss. Code Ann. § 11-51-75, when an appeal of a decision rendered by municipal authorities is not perfected within the statutory time constraint of ten days, no jurisdiction is conferred upon the appellate court

STATE BOARDS - LEGAL AUTHORITY - UNLAWFUL ACTION - A mere allegation of unlawful action by a board does not suspend the requirements of Miss. Code Ann. § 11-51-75

CIVIL PROCEDURE - CLAIMS - COMPULSORY COUNTERCLAIMS - A counterclaim is compulsory if (1) at the time the action was commenced, the claim was the subject of another pending action; or (2) the opposing party brought suit upon his claim by attachment or other process by which the court did not acquire jurisdiction to render a personal judgment on that claim, and the please is not stating any counterclaim

FACTS

Delando Wilson, the police chief for the City of Greenville, informed officials at a board meeting on January 5, 2021, that he was considering resigning. The City Council ("City") then voted unanimously to accept what it interpreted as an oral resignation. Wilson and other city officials had meetings about transitioning to a new police chief and Wilson retained legal representation. At a January 19, 2021, board meeting, Wilson informed the City that he was not resigning. The City treated Wilson's announcement as a request to reconsider the order accepting his resignation. The City then denied Wilson's request and set January 31, 2021, as the date of the end of his employment. Wilson filed suit in an attempt to enjoin the council from enforcing the order in circuit court, but the case was dismissed for lack of jurisdiction. Wilson filed a motion for reconsideration or to alter or amend the judgment, which was denied. Wilson appealed. Then, the City filed a replevin action in the circuit court to recover the City's property that was in Wilson's possession. Wilson filed a counterclaim and motion to dismiss the replevin action. Wilson argued that the City did not have the authority to enforce a resignation he did not offer. The circuit court granted the City's replevin action and denied Wilson's counterclaim and motions. Wilson appealed.

ISSUES

Whether (1) the circuit court erred by dismissing Wilson’s case for lack of jurisdiction; (2) “unlawful” action by the City relieved the duty to comply with Miss. Code Ann. § 11-51-75; (3) the circuit court erred by declining to accept jurisdiction of Wilson’s counterclaim filed in response to the City’s complaint for replevin; and (4) the Court of Appeals should have accepted the attorneys’ motions for sanctions.

HOLDING

(1) Because Wilson had had notice, an opportunity to be heard, and knowledge of the results of the proceedings, he was able to comply with the ten-day deadline, and the circuit court did not err in dismissing the case for lack of jurisdiction. (2) Because the City’s order was final on its face, Wilson was required to appeal under Miss. Code Ann. § 11-51-75, and because he failed to do so, the circuit court properly dismissed the claim. (3) Because the matter of Wilson’s resignation was already pending on appeal, the counterclaim was not compulsory, and the circuit court did not err by declining to accept jurisdiction. (4) Because none of the allegations in either of the two motions rose to the level of sanctionable conduct, the motions were denied. Therefore, the Court of Appeals affirmed the judgment of the Washington County Circuit Court.

Affirmed - 2021-CA-00316-COA (Sept. 6, 2022)

Opinion by Judge Greenlee
Hon. Margaret Carey-McCray (Washington County Circuit Court)
Renetha Latrice Frieson for Appellant - Willie Griffin for Appellee

Consolidated with:

Affirmed - 2021-CA-00518-COA (Sept. 6, 2022)

Hon. Carol L. White-Richard (Washington County Circuit Court)
Renetha Latrice Frieson for Appellant - Willie Griffin for Appellee
Briefed by [Constance Hartline](#)

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COURT OF APPEALS - POST-CONVICTION RELIEF

BEASLEY V. STATE

CIVIL - POST-CONVICTION RELIEF

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

POST-CONVICTION RELIEF - INEFFECTIVE ASSISTANCE OF COUNSEL - PERSONAL AFFIDAVIT - In the post-conviction relief context, a defendant’s claim of ineffective assistance of counsel must be pled with specificity and be supported by affidavits other than their own; a PCR movant may not rely solely on his own self-serving affidavit or otherwise unsupported allegations in his brief

POST-CONVICTION RELIEF - INEFFECTIVE ASSISTANCE OF COUNSEL - CONFLICT OF INTEREST - Conflict of interest claims involving attorneys in criminal cases fall under ineffective assistance of counsel under the Sixth Amendment, and a defendant must establish that an actual conflict of interest adversely affected his lawyer’s performance; an actual conflict means that a potential for conflict or hypothetical or speculative conflicts will not suffice for reversal

FACTS

In 2017, Nicholas Beasley was indicted, as a habitual offender and subsequent drug offender, on two charges: one count of selling methamphetamine and one count of conspiracy to sell methamphetamine. In 2018, Beasley pled guilty to one count of the sale of methamphetamine as a habitual offender. The State agreed to nolle prosequi the count for conspiracy

to sell methamphetamine and to drop the drug-offenders enhancement as part of the plea agreement. The trial court sentenced Beasley to serve twenty years in the custody of the Mississippi Department of Corrections. In 2021, Beasley filed a post-conviction relief (“PCR”) motion claiming he had received ineffective assistance of counsel because of his trial counsel’s failure to acquire, provide, and review discovery before Beasley entered his guilty plea; failure to pursue and offer mitigating evidence of his rehabilitation; and representing him despite an inherent conflict of interest in representing drug dealers. The circuit court dismissed Beasley’s motion after finding that the face of the motion clearly showed Beasley was not entitled to relief. Beasley appealed.

ISSUE

Whether the trial court erred in dismissing Beasley’s motion for PCR because his Sixth Amendment right to effective assistance of counsel was violated by his attorney’s representation of his guilty-plea proceedings.

HOLDING

Because Beasley’s PCR motion failed to substantiate his claim by only including his own affidavits and an affidavit by an attorney not involved in the case that claimed trial counsel had failed to obtain or provide to Beasley any discovery materials before he entered the guilty plea, because Beasley failed to offer any evidence or affidavits to substantiate his allegations that his trial attorney failed to pursue mitigating evidence of his rehabilitation ability or to prove that his plea deal would have changed but for counsel’s alleged failure, and because Beasley failed to demonstrate a conflict of interest by trial counsel’s representation of drug dealers or that it adversely affected his lawyer’s performance, Beasley failed to meet the two-prong *Strickland* test required to establish ineffective assistance of counsel and, thus, the trial court did not err in dismissing his PCR motion. Therefore, the Court of Appeals affirmed the judgment of the Madison County Circuit Court.

Affirmed - 2021-CA-00653-COA (Sept. 6, 2022)

Opinion by Judge Smith

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

Cynthia Ann Stewart for Appellant - Allison Elizabeth Horne (Att’y Gen. Office) for Appellee

Briefed by [Ashley House](#)

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CASTON V. STATE

CIVIL - POST-CONVICTION RELIEF

CRIMINAL PROCEDURE - GUILTY PLEAS - WAIVER - A defendant waives their right to challenge their sentence when they freely, voluntarily, and intelligently enter a guilty plea

CRIMINAL PROCEDURE - SENTENCING - GROSS DISPROPORTIONALITY - To determine whether a sentence violates a defendant’s Eighth Amendment rights, courts must determine whether the sentence is grossly disproportionate to the crime by comparing the gravity of the offense to the severity of the sentence; sentences that do not exceed the maximum punishment allowed by statute will not be considered grossly disproportionate

CRIMINAL PROCEDURE - SENTENCING - CO-DEFENDANTS - There is no requirement that co-defendants receive identical punishment for an offense

FACTS

In 2011, John Caston pled guilty to ten counts of armed robbery with a firearm enhancement committed in Hinds County over the course of two days. Caston’s confession identified four co-defendants involved in the robbery, who were also each indicted for ten counts of armed robbery with a firearm enhancement. The trial court sentenced Caston to thirty years on each count to serve concurrently in the custody of the Mississippi Department of Corrections. In 2020, Caston filed a post-conviction relief (“PCR”) motion requesting an evidentiary hearing on the grounds that his sentence was disproportionate to the sentences his co-defendants received, violating his Eighth Amendment rights. He also asked the trial court to re-examine his sentence as a youth offender and argued that his PCR motion was not

procedurally barred because he could not have raised the claim at trial or on direct appeal, because he was sentenced before his co-defendants and because his claim involved a fundamental-rights exception. The trial court denied Caston's request for an evidentiary hearing and dismissed the PCR motion, after finding that his co-defendants were convicted of lesser charges, he agreed to the sentence without objection, and his youth was not a determinative factor. Caston appealed.

ISSUES

Whether (1) Caston waived his right to challenge the sentence and (2) Caston's sentence was disproportionate under the Eighth Amendment.

HOLDING

(1) Because Caston freely, voluntarily, and intelligently entered into a plea agreement with the State, Caston waived his right to challenge his sentences and his claim was procedurally barred. (2) Because Caston's thirty-year sentences did not exceed the statutory maximum and the severity of the sentences did not exceed the gravity of the offenses, because the trial court ordered all ten sentences to run concurrently instead of ordering the sentences to run consecutively, which would have resulted in a total of three hundred years for Caston to serve, because trial courts were not required under the Eighth Amendment to impose identical sentences on co-defendants, and because Caston failed to provide evidence to substantiate his assertions that his co-defendants pled guilty to lesser charges and received lighter sentences than Caston, Caston's sentence of thirty years was not grossly disproportionate to his ten convictions of armed robbery under the Eighth Amendment. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Circuit Court.

Affirmed - 2021-CA-00397-COA (Sept. 6, 2022)

Opinion by Judge Smith

Hon. Betty W. Sanders (Hinds County Circuit Court, First Judicial Dist.)

Sanford E. Knott for Appellant - Alexandra Lebron (Att'y Gen. Office) for Appellee

Briefed by [Naomi Migoya](#)

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NORWOOD V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - PROBATION REVOCATION - ABSCONDMENT - Pursuant to Miss. Code Ann. § 47-7-37.1, if a court finds 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; absconding from supervision means the failure of a probationer to report to his supervising officer for six or more consecutive months

POST-CONVICTION RELIEF - PROBATION REVOCATION - TIMELINESS - Pursuant to Miss. Code Ann. § 47-7-37(10), unless good cause for delay is established in the record of the proceeding, the probation revocation charge shall be dismissed if the revocation hearing is not held within thirty days of the warrant being issued; a circuit court has discretion, under Miss. Code Ann. § 47-7-37.1 to revoke PRS notwithstanding the thirty-day period

POST-CONVICTION RELIEF - POST-RELEASE SUPERVISION - TIME LIMIT - Miss. Code Ann. § 47-7-34 unquestionably limits the period of time that the MDOC may supervise an offender who is on PRS to five years, but the clear language of the statute does not limit the total number of years of PRS to five years; the total number of years of incarceration plus the total number of years of PRS shall not exceed the maximum sentence authorized by law

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

FACTS

In 2015, Kedric Norwood pled guilty to simple assault of a law enforcement officer and grand larceny of property valued over \$5,000 but less than \$25,000. The circuit court sentenced Norwood to serve five years in custody for the

assault conviction and to a consecutive term of ten years of post-release supervision (“PRS”), with five years reporting and five years non-reporting, for the grand larceny conviction. After Norwood began serving his PRS, a grand jury returned a five-count indictment against him in May 2018. In July 2019, Norwood’s probation officer, Luther Folson Jr., signed an affidavit alleging that Norwood had violated his PRS conditions when he failed to report to the Mississippi Department of Corrections (“MDOC”) since February 2019. As such, the circuit court issued a bench warrant for Norwood’s arrest. In October 2019, Norwood failed to appear and enter his plea in the five-count indictment, and the circuit court issued another bench warrant for Norwood’s arrest related to that matter. Norwood was taken into custody in January 2021 and received a summons to appear in court to answer for the alleged PRS violation. Norwood and his attorney appeared before the circuit court and requested a hearing on the allegations that Norwood had failed to report to MDOC. On the same day, the circuit court held a formal revocation hearing where the State called Officer Folson to testify. Folson testified that Norwood had not complied with his reporting requirement since February 2019 and that he had tried to call Norwood multiple times between March and June of 2019 to remind him of his duty to report. Officer Folson further testified that he tried to locate Norwood at his residence to no avail and that he left a letter that advised Norwood of his duty to report with Norwood’s father. However, Norwood remained delinquent. Norwood also testified, stating that he lacked knowledge of Officer Folson’s attempts to contact him and that he attempted to contact Officer Folson once, but was told he was out of the office. Norwood testified that he had been in contact with two other probation officers, and therefore had not failed to comply with his duty to report. The circuit court found that the State had presented sufficient credible evidence to establish that Norwood failed to report to MDOC for almost two years and that Norwood had absconded under Miss. Code Ann. § 47-7-37.1. As a result, the circuit court revoked all ten years of Norwood’s PRS and credited him for the time spent in detention while he awaited his formal revocation hearing. Norwood filed a PCR motion in which he asserted that the revocation of his PRS violated his right to due process and that his trial attorney provided ineffective assistance of counsel, which the circuit court denied. Norwood appealed.

ISSUES

Whether (1) the circuit court lacked sufficient grounds to revoke Norwood’s PRS and consider unrelated charges in reaching its determination; (2) Norwood received a timely revocation hearing; (3) in revoking all of Norwood’s PRS, the circuit court imposed a sentence that was twice the statutory minimum for the crime committed; and (4) Norwood received ineffective assistance of counsel.

HOLDING

(1) Because the revocation-hearing transcript contained evidence to support the circuit court’s finding that at the time of his arrest, Norwood had willfully failed to report to MDOC for six or more consecutive months as required, and because the circuit court did not reference any new charges in reaching its determination but confined the basis for its decision to the abscondment charge, the circuit court did not err in its revocation of Norwood’s PRS and his assertions lacked merit. (2) Because Norwood failed to show any prejudice toward him resulted from the delay or from the failure to conduct the hearing, because Norwood’s incarceration was not due solely to the decision of whether to revoke his PRS but also due to his failure to appear in court on a separate matter, and because any delay in holding Norwood’s revocation hearing was due to his abscondment, no prejudice to Norwood resulted as he awaited his revocation hearing, any delay constituted harmless error, and the circuit court had discretion to revoke the PRS notwithstanding the thirty-day period. (3) Because Norwood could have received a maximum sentence of ten years, the circuit court’s sentence of ten years of PRS, with five years reporting and five years nonreporting, did not exceed the statutory limit imposed by Miss. Code Ann. §§ 47-7-34 or 97-17-41(1). (4) Because Norwood failed to show a reasonable probability that the revocation proceeding would have ended differently had the issues been raised before the circuit court, Norwood did not establish that his attorney’s performance prejudiced his defense. Therefore, the Court of Appeals affirmed the judgment of the Panola County Circuit Court.

Affirmed - 2021-CA-00802-COA (Sept. 6, 2022)

Opinion by Judge Smith

Hon. James McClure III (Panola County Circuit Court, First Judicial Dist.)

Cynthia Ann Stewart for Appellant - Scott Stewart (Att’y Gen. Office) for Appellee

Briefed by [Caitlyn Dills](#)

ROBERTS V. STATE

CIVIL - POST-CONVICTION RELIEF

APPELLATE PROCEDURE - PROCEDURAL BARS - ISSUE PRESERVATION - Issues not raised in the trial court may not be raised on appeal

APPELLATE PROCEDURE - ISSUE STATEMENT - PRESENTATION - A statement shall identify the issues presented for review and each issue presented shall be separately numbered in the statement; an issue not distinctly identified shall not be argued by counsel, except upon request of the court

CRIMINAL PROCEDURE - GUILTY PLEA - VOLUNTARINESS - A guilty plea is voluntarily and intelligently made if the circuit court advised the defendant of his rights, the nature of the charges against him, and the consequences of the guilty plea

POST-CONVICTION RELIEF - INEFFECTIVE ASSISTANCE OF COUNSEL - WAIVER - A voluntary guilty plea waives claims of ineffective assistance of counsel insofar as the alleged ineffectiveness relates to the voluntariness of the giving of the guilty plea

FACTS

Officers went to the home of Don Roberts Jr. after receiving complaints that ATVs were driving on public roads. During the first visit, officers noticed marijuana plants growing, were granted a search warrant, and found methamphetamine, guns, marijuana plants, and a bag of marijuana in Roberts's home. The second search occurred after an additional complaint about ATVs. On the way to the residence, officers stopped a woman on an ATV and located drugs in her purse. Again, officers obtained a search warrant and discovered methamphetamine, a gun, and a bag of marijuana in Roberts's home. Roberts was indicted separately for each search. Both indictments charged Roberts with possession of methamphetamine, possession of a firearm by a felon, and possession of marijuana as a second drug offender and habitual offender. The indictment from the second search included an additional charge for manufacture of a controlled substance. Roberts pled guilty to all charges under both indictments. Roberts testified in plea colloquy that he had no complaints about his counsel, was fully satisfied with his attorney's services, and had discussed his charges with his attorney. Roberts was sentenced to twenty-five years in the custody of the Mississippi Department of Corrections. Roberts filed a motion for post-conviction relief, arguing a denial of effective assistance of counsel. The circuit court denied Roberts's motion. Roberts appealed.

ISSUES

Whether (1) Roberts's petition for PCR as to one of the indictments was procedurally barred for failing to challenge the indictment in circuit court; (2) Roberts's attack on the voluntariness of his plea was waived for failing to identify it in his issue statement, or, if not waived, whether the claim lacked merit because of Roberts's sworn plea petition and statements during his plea colloquy; and (3) Roberts could have claimed ineffective assistance of counsel.

HOLDING

(1) Because Roberts did not challenge his guilty plea as to one of his two indictments in the circuit court, he was procedurally barred from raising the issue on appeal. (2) Because Roberts failed to separately list challenges to the voluntariness of his guilty pleas, the issue was procedurally barred; despite the procedural bar, because Roberts was made aware of his rights, the nature of the charges against him, and the consequences of his guilty plea, and because Roberts acknowledged it under oath, his plea was given knowingly, intelligently, and voluntarily, and was procedurally barred and without merit. (3) Because Roberts entered his guilty plea knowingly, intelligently, and voluntarily, was made aware of the nature and consequences of the charges, and expressed satisfaction with his attorney's representation, and because he did not support his claims with an affidavit other than his own nor challenge the underlying search warrants or any particular facet of his counsel's performance, Roberts waived his claim for ineffective assistance of counsel. Therefore, the Court of Appeals affirmed the judgment of the Scott County Circuit Court.

Affirmed - 2021-CA-00998-COA (Sept. 6, 2022)

Opinion by Judge McCarty
Hon. Caleb Elias May (Scott County Circuit Court)
Jacob Michael Jenkins for Appellant - Casey Bonner Farmer (Att’y Gen. Office) for Appellee
Briefed by [Holdon Guy](#)

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COURT OF APPEALS - CRIMINAL CASES

BURNS V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - NEW TRIAL - SUFFICIENCY OF EVIDENCE - A new trial will not be ordered unless the court is convinced that the verdict is so contrary to the overwhelming weight of the evidence that to allow the verdict to stand would be to sanction an unconscionable injustice; this high standard is necessary because any factual disputes are properly resolved by the jury, not by an appellate court

CRIMINAL PROCEDURE - INEFFECTIVE ASSISTANCE OF COUNSEL - DIRECT APPEAL - Claims of ineffective assistance of counsel are not addressed on direct appeal unless (1) the record affirmatively shows ineffectiveness of constitutional dimensions, or (2) the parties stipulate that the record is adequate to allow the appellate court to make the finding without consideration of the findings of fact of the trial judge

FACTS

After a shopping trip, Delton Ray Burns and Stacy Monk returned to a hotel in Vicksburg where they proceeded to smoke meth. After a night of gambling, Burns and Monk got into a physical altercation at some point the next morning. An investigator with the Vicksburg Police Department responded to a call from the hotel regarding the physical disturbance between Burns and Monk. Burns was arrested and transported to the police station. While the investigator took Monk’s statement regarding the physical disturbance, Monk was very concerned about her wallet and asked the investigator repeatedly to go look for it as she was convinced Burns had stolen her wallet. A short time later, Vicksburg police were called back to the hotel because Monk was in the parking lot going through Burns’s truck. After leaving the hotel, Monk called the deputy chief of police of Vicksburg to tell him what happened that morning. Monk also informed him that they may want to search Burns’s truck for drugs. The Vicksburg police department narcotics investigator responded to the report and waited on backup while watching Burns dig through the contents of his vehicle. As Burns pulled out of the parking lot, the narcotics investigator initiated a traffic stop to arrest Burns for an outstanding warrant that was discovered. After Burns was asked to step out of the vehicle, a zip-lock bag containing a crystal-like substance was found on the driver’s seat. The substance was sent to the Mississippi Forensic Laboratory and testing showed that it was methamphetamine. A jury found Burns guilty of possession of more than ten grams but less than thirty grams of methamphetamine and he was sentenced to a term of twenty years in the Mississippi Department of Corrections, with fifteen years to serve and five years suspended upon the condition that he successfully complete five years of post-release supervision. Burns appealed.

ISSUES

Whether (1) the verdict was against the overwhelming weight of the evidence; (2) the trial court erred in refusing instruction D-4, defining actual and constructive possession; (3) Burns received ineffective assistance of counsel; (4) there was lack of evidence to support Burns’s conviction; and (5) the trial court abused its discretion.

HOLDING

(1) Because the jury resolved any conflicts in the evidence, determined the credibility of the witnesses, and weighed the evidence, and because the jury’s verdict was not so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice, the verdict was not against the overwhelming weight of the evidence. (2) Because instruction S-2 was read in conjunction with the other instructions given by the trial court, the

jury was properly instructed on the State's burden of proof. (3) Because claims of ineffective assistance of counsel were not ordinarily addressed on direct appeal, and because the record was insufficient to evaluate the claim, the claim was denied, and the right was preserved to raise the issue in a motion for post-conviction relief. (4) Because Burns only made mere assertions and did not make a meaningful argument in support of his assertions, and because he did not cite authorities to support his contentions, the assignment of error was procedurally barred from review and was without merit. (5) Because Burns did not provide meaningful argument or cite authorities in support of his contentions, the issue was barred from appellate review; however, because there was no authority for the claim that setting bond disqualified a judge from presiding over a trial, because the sentence imposed was a lawful sentence, and because nothing in the record supported the allegation that the district attorney had contact with the jurors during their deliberation, the trial court did not abuse its discretion. Therefore, the Court of Appeals affirmed the judgment of the Warren County Circuit Court.

Affirmed - 2021-KA-00310-COA (Sept. 6, 2022)

Opinion by Judge Emfinger

Hon. Toni Demetresse Terrett (Warren County Circuit Court)

Mollie Marie McMillin (Pub. Def. Office) for Appellant - Allison Kay Hartman (Att'y Gen. Office) for Appellee

Briefed by [Jack Surber](#)

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