

**MISSISSIPPI COURT OF APPEALS DECISIONS – NOVEMBER 1, 2022****COURT OF APPEALS - CIVIL CASES****BAUGHMAN V. BAUGHMAN****CIVIL - DOMESTIC RELATIONS**

**FAMILY LAW - DIVORCE - SEPARATE MAINTENANCE** - There are two requirements that give a jurisdictional basis and power to grant separate maintenance claims: (1) a separation without fault on the part of the petitioner spouse, and (2) the offending spouse's willful abandonment of petitioner spouse with refusal to provide support to him or her; the petitioner need not be completely blameless, only that they cannot materially contribute to the separation in amounts equal to or greater than that of the spouse they are suing for separate maintenance

**FAMILY LAW - DIVORCE - ADULTERY** - One seeking a divorce on the grounds of adulterous activity must show by clear and convincing evidence both an adulterous inclination and a reasonable opportunity to satisfy that inclination; condonation is an affirmative defense to adultery

**FAMILY LAW - DIVORCE - HABITUAL CRUEL AND INHUMANE TREATMENT** - Conduct that evinces habitual cruel and inhuman treatment must be such that it either (1) endangers life, limb, or health, or creates a reasonable apprehension of such danger, rendering the relationship unsafe for the party seeking relief, or (2) is so unnatural and infamous as to make the marriage revolting to the nonoffending spouse and render it impossible for that spouse to discharge the duties of marriage, thus destroying the basis for its continuance; however, the court must assess the cruelty on a subjective standard, concentrating on the conduct's effect on the particular offended spouse

**FACTS**

Alan and Natasha Baughman married in 2001 and later separated in 2018. Alan filed a complaint for separate maintenance and related relief, and Natasha filed a counterclaim for divorce on the grounds of uncondoned adultery, habitual and inhuman treatment, or irreconcilable differences. Alan asserted that Natasha was having an affair, to which Natasha admitted to having a flirtatious relationship but denied that the relationship became sexual until about one year after the separation. Natasha asserted that Alan had an affair in 2006, which Alan admitted, but he denied having any other affairs. Natasha provided counseling records that discussed several incidents throughout the marriage in which Alan was aggressive or violent, including Alan breaking family items and doors and intimidating Natasha. Natasha also provided text messages between the parties in which Alan threatened to send explicit photos of Natasha to her family or post the photos on social media if she did not return to their house. Natasha further testified that she was sexually assaulted by Alan, but Alan described the encounter as consensual. Lastly, Natasha described that the state of her marriage resulted in anxiety, depression, stomach issues, and hair loss. The chancery court denied Alan's separate maintenance claim, finding that Alan's conduct materially contributed to Natasha's removal from the marital home. Further, the chancery court denied Natasha's counterclaim for divorce on the ground of adultery because Natasha condoned the 2006 affair and failed to provide corroborating evidence of other affairs. Lastly, the chancery court found that Natasha did not meet the burden of proof for a divorce on the ground of habitual cruel and inhuman treatment. Natasha appealed and Alan cross-appealed.

**ISSUES**

Whether the chancery court (1) erred in denying Alan's request for separate maintenance and (2) properly denied Natasha's grounds for a divorce.

**HOLDING**

(1) Because there was substantial credible evidence to support Natasha’s contentions that Alan’s conduct was the cause of the separation, the chancery court did not err in denying Alan’s claim for separate maintenance. (2) Because the chancery court’s determination that Natasha failed to carry her burden on the adultery claim was supported by substantial credible evidence, there was no reversible error; however, because the chancery court used an incorrect legal standard when it did not analyze Natasha’s claim of habitual cruel and inhuman treatment from her perspective, and because Natasha provided sufficient evidence that would entitle her to a divorce on the ground of habitual, cruel, and inhuman treatment, the chancery court erred by denying Natasha’s counterclaim for divorce. Therefore, on direct appeal, the Court of Appeals affirmed in part, reversed and rendered in part, and remanded the judgment of the Marion County Chancery Court. On cross-appeal, the Court of Appeals affirmed the judgment of the Marion County Chancery Court.

**On Direct Appeal: Affirmed in Part; Reversed and Rendered in Part; Remanded. On Cross-Appeal: Affirmed - 2021-CA-00074-COA (Nov. 1, 2022)**

Opinion by Judge Westbrook

Hon. Michael Chadwick Smith (Marion County Chancery Court)

S. Christopher Farris for Appellant/Cross-Appellee - R. Allen Flowers for Appellee/Cross-Appellant

Briefed by [Constance Hartline](#)

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## **BLAGODIROVA V. SCHROCK**

### **CIVIL - CUSTODY**

**FAMILY LAW - CUSTODY MODIFICATION - REQUIREMENTS** - To succeed on a request for modification, the non-custodial party must prove: (1) that a material change in circumstances has transpired since issuance of the custody decree; (2) that this change adversely affects the child’s welfare; and (3) that the child’s best interests mandate a change of custody

**FAMILY LAW - CUSTODY MODIFICATION - MATERIAL CHANGE** - There must be an unforeseeable change in the overall living conditions of the child to constitute a material change in circumstances

**FAMILY LAW - CUSTODY MODIFICATION - ADVERSE EFFECT** - If, after examining the totality of the circumstances, a material change in circumstances in the custodial home is found to have occurred, the court must separately and affirmatively determine that this change is one which adversely affects the child

**FAMILY LAW - ATTORNEY’S FEES - ALLEGATIONS OF ABUSE** - Pursuant to Miss. Code Ann. § 93-5-23, if after an investigation or final disposition by family court allegations of child abuse are found to be without foundation, the chancery court shall order the alleging party to pay all court costs and reasonable attorney’s fees incurred by the defending party in responding to such allegation

### **FACTS**

Ekaterina Blagodirova married Jose Schrock in 2006. Their marriage resulted in one child, J.R. The parties divorced, and Blagodirova began a romantic relationship with Andres Maldonado De La Rosa, an undocumented immigrant. Blagodirova and Schrock signed an agreement where they agreed to joint custody of J.R., with Blagodirova having sole physical custody, Schrock having visitation, and Schrock paying monthly child support. Maldonado obtained an illegal driver’s license in order to drive J.R. around. One night while driving with Blagodirova and J.R., Maldonado was stopped at a roadblock, arrested and deported to Mexico. Maldonado later re-entered the United States without citizenship and continued to reside again Blagodirova and J.R. After Maldonado’s deportation, Schrock filed a complaint to modify their agreement pertaining to custody of J.R., requesting sole custody and termination of child support obligations. Schrock alleged that J.R. suffered abuse and neglect from Blagodirova and Maldonado. As such, the trial court appointed Thomas M. Brahan as guardian ad litem (“GAL”). Blagodirova filed a counter-complaint requesting an increase in child support payments and an award of attorney’s fees for frivolous allegations. The chancery court found that the totality of circumstances warranted a change in custody and that there was a material change that caused an adverse effect on J.R. Further, the chancery court considered the *Albright* factors and determined they weighed in favor of Schrock. The

chancery court modified the agreement and granted Schrock sole physical custody. Each party was ordered to pay their respective attorney fees. Blagodirova appealed.

### **ISSUES**

Whether the chancery court erred in (1) modifying the custody agreement; (2) failing to award Blagodirova attorney's fees; and (3) denying Blagodirova's motion to compel completion of Schrock's financial disclosure statement.

### **HOLDING**

(1) Because there was no evidence of a pattern of conduct that harmed J.R.'s emotional or mental well-being sufficient to support a modification of child custody even though Blagodirova's actions created a material change in circumstances, the chancery court did not have facts to support a modification of child custody. (2) Because the GAL did not find that the allegations of abuse and neglect were frivolous, the chancery court acted within its discretion in ordering each party to pay his or her own attorney's fees and in regard to the GAL fees. (3) Because the chancery court had the authority to excuse a party from mandatory disclosures, and because the failure to submit full and complete financial disclosure statements alone was insufficient to find that Schrock committed fraud on the court, the chancery court did not abuse its discretion. Therefore, the Court of Appeals affirmed in part and reversed and rendered in part the judgment of the Monroe County Chancery Court.

### **CONCURRENCE IN PART & DISSENT IN PART**

Presiding Judge Carlton argued that the chancery court's findings should have been afforded deference and that there was substantial credible evidence to support a determination that the material change in circumstances adversely effecting J.R. developed in Blagodirova's home. Therefore, she would have affirmed the order modifying custody.

#### **Affirmed in Part; Reversed and Rendered in Part - 2020-CA-01162-COA (Nov. 1, 2022)**

Opinion by Judge Westbrook - Concurrence in Part & Dissent in Part by Presiding Judge Carlton

Hon. Jacqueline Estes Mask (Monroe County Chancery Court)

Jak McGee Smith for Appellant - Jason D. Herring & Michael Spencer Chapman for Appellee

Briefed by [Holdon Guy](#)

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## **KEYS V. REHAB., INC.**

### **CIVIL - PERSONAL INJURY**

**CIVIL PROCEDURE - STATUTE OF LIMITATIONS - THREE-YEAR LIMITATION** - Under Miss. Code Ann. §15-1-49(1), all actions for which no other period of limitation is prescribed shall be commenced within three years next after the cause of such action accrued, and not after

**CIVIL PROCEDURE - BAD FAITH CLAIM - EXHAUSTED** - A claim for bad faith in denying particular benefits is exhausted when an award of those benefits is final

### **FACTS**

In February 2017, Darryl Keys, an airplane mechanic for the Mississippi Military Department, was injured while working. Keys visited Dr. Richard Clatterbuck, a neurosurgeon, in July 2017, who informed Keys that he needed urgent surgery. A pre-certification request for Keys's surgery was sent from Dr. Clatterbuck's office to Cochran Cannon Management Services Inc. ("CCMSI"), then from CCMSI to Rehabilitation Inc. ("Rehabilitation"). Rehabilitation then sent the request to The Reny Company ("Reny"). While awaiting the surgery request, Keys fell in his home, which resulted in him becoming a quadriplegic. The same day, Keys's surgery request was denied. CCMSI reconsidered and approved the request. In 2019, Keys filed a petition to controvert with the Mississippi Workers' Compensation Commission. Later, Keys and his employer submitted an agreed order stipulating that Keys's fall at his home and his resulting quadriplegia was causally related to and resulted from his work injury. In September 2020, Keys filed a complaint against the Worker's Compensation Trust, CCMSI, Rehabilitation, Reny, and Safety National Casualty Corporation. Keys alleged bad faith

failure to pay wage benefits, conspiracy to deny and terminate his workers' compensation benefits, abuse of process, bad faith failure to follow utilization review rules, regulations, and time lines, bad faith interference with doctor/patient relationship, sloppy, irresponsible claims handling, interference with doctor/patient relationship and clandestine claims activities, and failure to timely comply with utilization rules, regulations, and procedures. Furthermore, Keys alleged that the defendants had willfully and openly disregarded their obligations to respond to his request, and their failure to timely respond resulted in his quadriplegia. Keys amended his complaint, alleging that his paralysis was not a result of his work-related injury, but rather the result of the willful and wanton negligent and irresponsible claims handling activities of the defendants in denying and delaying his medical care. Rehabilitation filed an answer and affirmative defenses and a motion to dismiss, requesting the circuit court dismiss the causes of action based on the alleged failure to timely respond to the surgery request because they were barred by the three-year statute of limitations under Miss. Code Ann. §15-1-49(1). The circuit court granted Rehabilitation's motion to dismiss. Keys appealed.

### **ISSUES**

Whether the circuit court erred by finding that Keys's claims were (1) negligence-based claims and (2) barred by the statute of limitations.

### **HOLDING**

(1) Because Keys alleged that the defendants' failure to timely respond to his request for surgery caused him to become a quadriplegic, and because a determination of whether Keys was entitled to worker's compensation benefits was irrelevant to his claims, the circuit court did not err by finding that Keys's claims were negligence-based. (2) Because Keys filed his complaint in 2020, which was after the statutory limitations period had expired, the claims were barred by the three-year statute of limitations. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Circuit Court.

**Affirmed - 2021-CA-01338-COA (Nov. 1, 2022)**

Opinion by Judge Greenlee

Hon. Eleanor Johnson Peterson (Hinds County Circuit Court, First Judicial Dist.)

William H. Jones & Taylor Rhue Brinkley for Appellant - Robert Douglas Morgan, Christopher Herbert Coleman, & Donald Scott Murray for Appellee

Briefed by [Sierra Albano](#)

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## **MISS. DEP'T OF HUM. SERVS. V. REAVES**

### **CIVIL - STATE BOARDS & AGENCIES**

**APPELLATE PROCEDURE - RECORD ON APPEAL - APPELLANT'S DUTY** - The appellant has the duty of ensuring that the record contains sufficient evidence to support his assignments of error on appeal

**FAMILY LAW - CHILD SUPPORT - REIMBURSEMENT** - Child support is for the benefit of the child and past-due child support payments cannot be modified or forgiven by any court because the parent's obligation of child support vests in the child when the payment becomes due

**FAMILY LAW - CHILD SUPPORT - CREDIT FOR NONCUSTODIAL PARENT** - A non-custodial parent is not entitled to reimbursement from a custodial parent for child support payments that have vested in the minor child and have been paid pursuant to valid court order; however, the noncustodial parent may be entitled to credit for any additional support which he has evinced by satisfactory proof to the trial court

### **FACTS**

Tony and Bessie Reaves divorced in 2013, Bessie was granted physical custody of their child, and Tony was ordered to pay Bessie \$330 per month in child support. Sometime after, Tony filed a motion for contempt and modification of the custody agreement. In 2016, the chancery court awarded custody of the child to Tony and reserved ruling on the issue of child support until credible financial evidence could be obtained. In 2018, the chancery court entered an order

continuing the trial on the custody modification motion and suspending Tony's child-support obligation until further order. In 2019, Tony and Bessie entered into an agreed temporary order of modification of custody, which would remain in effect until trial. Per the agreement, Tony and Bessie were awarded joint physical and legal custody of the child and no child support was ordered for either party. The order further stated that child support was ceased until the final judgment. At trial in 2020, Tony's attorney and counsel for the Mississippi Department of Human Services ("MDHS") reviewed Tony's tax returns and other child-support-payment documentation. Tony conceded that his total child-support arrearage was \$3,295.42. The chancery court entered an order awarding Tony and Bessie joint legal and physical custody of the child, with Tony having primary custody subject to visitation from Bessie. The chancery court also clarified that the 2016 order had discharged Tony of any further child-support obligations. Subsequently, the chancery court entered an order granting Tony a credit of \$3,039.39 against his child-support arrearage, explaining that it arrived at the amount after reviewing documents showing payments that had not been accounted for in prior orders. Tony filed a motion to reconsider and for clarification. The chancery court entered an order explaining Tony was entitled to reimbursement of child-support payments and ordered MDHS to reimburse Tony \$4,115.39. MDHS appealed.

### **ISSUES**

Whether (1) the order of reimbursement was improper because Tony did not seek it as relief in his pleadings; (2) MDHS's due process rights were violated by Tony's failure to give MDHS proper notice and an opportunity to be heard regarding the reimbursement; and (3) the chancery court erred in ordering the reimbursement because the child support had already vested and been properly disbursed.

### **HOLDING**

(1) Because MDHS had the duty to ensure that the record on appeal contained sufficient evidence to support its assignments of error, and because MDHS did not request that any pleadings or motions be included in the record on appeal that would evince the relief Tony requested, the Court of Appeals was unable to consider whether Tony's pleadings had sought reimbursement as relief. (2) Because MDHS had the duty to ensure that the record on appeal contained sufficient evidence to support its assignments of error, and because MDHS did not request that any pleadings or motions be included in the record on appeal that would evince Tony's alleged failure to provide notice, the Court of Appeals was unable to consider whether MDHS's due process rights were violated. (3) Because Tony's obligation of child support vested in the minor child when the payment became due and no court could modify or forgive past-due payments, because Tony, as the non-custodial parent, was not entitled to reimbursement from Bessie for child support payments that had vested in the minor child and had been paid pursuant to a valid court order, and because Tony, as the non-custodial parent, was only entitled to a credit against his child support obligation for any additional support, the chancery court's order of reimbursement was improper. Therefore, the Court of Appeals reversed and remanded the judgment of the Hinds County Chancery Court.

#### **Reversed & Remanded - 2021-SA-01133-COA (Nov. 1, 2022)**

Opinion by Presiding Judge Carlton

Hon. Denise Owens (Hinds County Chancery Court, First Judicial Dist.)

Allyson Lewis Brock & Darrell C. Baughn for Appellant - *Pro se* for Appellee

Briefed by [Kaehla Outlaw](#)

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## **VECTOR TRANSP. CO. V. MISS. DEP'T OF EMP. SEC.**

### **CIVIL - STATE BOARDS & AGENCIES**

**EMPLOYMENT LAW - UNEMPLOYMENT BENEFITS - DISQUALIFICATION** - An employee shall be disqualified from receiving unemployment benefits if he is discharged for misconduct connected to his work; the employer must prove misconduct connected to the work by substantial, clear, and convincing evidence

**EMPLOYMENT LAW - MISCONDUCT - STANDARD** - Misconduct includes conduct which shows intentional disregard, or utter indifference, of an employer's interest as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of the employee

### **FACTS**

Vector Transportation Co. ("Vector") hired Anna K. Renfroe for its carrier-support division in 2011. At the time of hire, employees in carrier support were given an employee handbook that set forth the expectation that they be on the phone with carriers for a minimum of twenty hours per week. Even though warnings were not required, Renfroe received an oral warning for her misconduct in 2020 when she did not meet the minimum phone requirement. After another question about her call time, Renfroe agreed she needed to be on the phone more, admitted there was no excuse, and stated that she would work on her time. Renfroe was put on a sixty-day probationary period with the understanding that if there was no improvement during that period, her job would be in jeopardy. Renfroe's job performance did not improve during that period, and she was given another thirty days before her performance was to be re-evaluated. Eventually, Renfroe's employment was terminated. Subsequently, Renfroe filed a claim for unemployment benefits to which the Mississippi Department of Employment Security ("MDES") notified Vector of its determination that Vector did not show that Renfroe was discharged for misconduct and that Renfroe was eligible for benefits. Vector appealed that decision to the Administrative Law Judge ("ALJ"), who found that Vector failed to provide substantial, clear, and convincing evidence proving that Renfroe was discharged for misconduct. Vector then appealed to the MDES Board of Review, which adopted the ALJ's findings of fact and opinion and affirmed the ALJ's decision. Vector then appealed to the trial court, which affirmed the decision of the Board of Review. Vector appealed.

### **ISSUE**

Whether Vector proved by substantial, clear, and convincing evidence that Renfroe's employment was terminated as a result of misconduct connected to the work she was hired to perform.

### **HOLDING**

Because the ALJ's factual findings were not supported by substantial evidence and were, therefore arbitrary and capricious, because Renfroe had previously demonstrated the ability to meet Vector's work requirements, and because Renfroe's extended period of noncompliance, after having been given multiple opportunities to comply, constituted conduct evincing such willful and wanton disregard of the employer's interest as was found in deliberate violations or disregard of standards of behavior which the employer had the right to expect from his employee, Vector met its burden of proof to show that Renfroe's employment was terminated for misconduct. Therefore, the Court of Appeals reversed and rendered the judgment of the Lee County Circuit Court.

### **DISSENT**

Judge Westbrooks argued that the trial court correctly determined that Renfroe was entitled to unemployment benefits. She argued that because of the deferential standard of review that must have been given to an agency's decision and due to the rebuttable presumption that exists in an agency's behavior, the trial court correctly affirmed the Board of Review's decision. She noted that the record showed that Vector did not consistently apply its mandatory phone time rule to Renfroe, and that Vector failed to produce evidence that it applied the rule consistently to other employees. Lastly, she noted that the ALJ's original facts, findings, and conclusion that Renfroe was entitled to benefits were supported by substantial evidence.

### **Reversed & Rendered - 2021-CC-00576-COA (Nov. 1, 2022)**

En Banc Opinion by Judge Emfinger - Dissent by Judge Westbrooks

Hon. Kelly Lee Mims (Lee County Circuit Court)

Margaret Sams Gratz for Appellant - Albert B. White for Appellees

Briefed by [Madison McLean](#)

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***COURT OF APPEALS - POST-CONVICTION RELIEF***

## JARVIS V. STATE

### CIVIL - POST-CONVICTION RELIEF

**CRIMINAL PROCEDURE - GUILTY PLEA - WAIVER** - The entry of a knowing and voluntary guilty plea waives all other defects or insufficiencies in an indictment; however, a guilty plea does not waive an indictment's failure to charge an essential element of the crime or lack of subject matter jurisdiction

**CRIMINAL PROCEDURE - GUILTY PLEA - ACCEPTANCE** - Before accepting a guilty plea, a circuit court must determine that the plea is voluntary and intelligently made and that there is a factual basis for the plea; a guilty plea is voluntarily and intelligently made if the circuit court advised the defendant of his rights, the nature of the charge against him, as well as the consequences of the plea

**CRIMINAL PROCEDURE - INEFFECTIVE ASSISTANCE OF COUNSEL - PROOF** - A claim of ineffective assistance of counsel requires proof that counsel's performance was objectively deficient, and that the defendant suffered prejudice as a result

**CRIMINAL PROCEDURE - INEFFECTIVE ASSISTANCE OF COUNSEL - GUILTY PLEA** - A voluntary guilty plea waives claims of ineffective assistance of counsel, except insofar as the alleged ineffectiveness relates to the voluntariness of the giving of the guilty plea; a claimant must show that counsel's errors proximately resulted in the guilty plea, and, but for counsel's errors, the claimant would not have entered the guilty plea

### FACTS

In 2016, Virgil Jarvis was arrested and indicted for attempted murder, possession of a weapon by a convicted felon, and possession of a controlled substance. Accordingly, Jarvis's parole was revoked, and he was placed in the custody of the Mississippi Department of Corrections ("MDOC"). The Mississippi Parole Board denied Jarvis's parole for an additional six months and Jarvis subsequently filed two pro se motions related to the charges. Jarvis's pre-trial conference was set for November 2016, and his trial for May 2017. Thirteen days before the pre-trial conference, one of Jarvis's attorneys resigned from the public defender's office and Jarvis was assigned a new attorney the following day. The pre-trial conference, at the request of the state and Jarvis's attorneys, was moved to January 2017. Jarvis was re-indicted on the same charges to include his status as a habitual offender. Later, Jarvis was arraigned for the new indictment and re-appointed the same attorneys. Additionally, the circuit court set the new trial date for August 2017 and dismissed the original indictment. Jarvis filed multiple pro se motions including a motion to dismiss the charges for failure to provide a speedy trial which was denied. Jarvis then requested time to file an interlocutory appeal from the denial of his motion to dismiss which was granted. Before the State's case-in-chief, Jarvis pled guilty and the circuit court found that he knowingly, intelligently, and voluntarily pled guilty. The Supreme Court dismissed Jarvis's petition for interlocutory appeal as moot, noting that Jarvis pled guilty to the indictment charges. Jarvis was sentenced to twenty-seven years for attempted murder, ten years as a habitual offender without eligibility for parole for possession of a firearm by a convicted felon, and eight years as a habitual offender without eligibility for parole for possession of a controlled substance, with all sentences to run consecutively. In 2020, Jarvis filed his post-conviction relief motion and asserted that his indictment was defective, his trial attorneys had rendered ineffective assistance of counsel, and his guilty pleas were involuntary, which the circuit court denied for lack of merit. Jarvis appealed.

### ISSUES

Whether (1) Jarvis's indictment was defective on account of the grand jury foreman's signature and the circuit court clerk's seal being inauthentic; (2) Jarvis's indictment was defective because the evidence only established a sufficient basis for aggravated assault rather than for attempted murder; and (3) Jarvis's trial attorneys rendered ineffective assistance of counsel by failing to file a motion to change Count I of the indictment from attempted murder to aggravated assault, advising him to plead guilty to attempted murder although insufficient evidence existed to support the charge, misinforming him of his eligibility for early release on the attempted-murder charge, and advising him that his guilty pleas would not affect his ability to pursue an interlocutory appeal from the denial of his speedy-trial motion.

### HOLDING

(1) Because the two pages of the indictment described as being inauthentic were corresponding front and back pages of the same document, and when viewed as such, the grand jury foreman's signature, and the circuit court clerk's seal from the back page of the document aligned with their reversed outlines on the front page of the document, the defective-indictment claim based on authenticity lacked merit. (2) Because the circuit court found a factual basis existed for the attempted-murder charge and that Jarvis entered his guilty plea voluntarily, knowingly, and intelligently, the record contained ample support for the circuit court's findings that Jarvis waived his defective-indictment claim based on an alleged insufficiency in the State's evidence and the issue lacked merit. (3) Because Jarvis's voluntary guilty pleas procedurally barred the alleged error of changing the indictment, because there was substantial evidentiary support for the circuit court's finding that a factual basis existed for Jarvis's attempted murder charge, because the record contained no credible evidence to substantiate the assignment of error that Jarvis's attorneys incorrectly advised him of the impact his guilty pleas would have on his ability to pursue an interlocutory appeal, because Jarvis's own admissions contradicted his assertions, because Jarvis did not sufficiently establish that his trial attorneys provided deficient legal representation that proximately caused him to enter guilty pleas, because Jarvis confirmed that he understood the sentence, and because Jarvis failed to demonstrate that his attorneys' allegedly incorrect advice as to his eligibility for early release proximately resulted in the guilty plea, and, but for the alleged error, Jarvis would not have entered the guilty plea, the claims raised regarding ineffective assistance of counsel lacked merit. Therefore, the Court of Appeals affirmed the judgment of the Pearl River County Circuit Court.

**Affirmed - 2021-CP-00930-COA (Nov. 1, 2022)**

Opinion by Judge Smith

Hon. Claiborne McDonald (Pearl River County Circuit Court)

*Pro se* for Appellant - Alexandra Rodu Rosenblatt (Att'y Gen. Office) for Appellee

Briefed by [Caitlyn Dills](#)

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## WALLACE V. STATE

### CIVIL - POST-CONVICTION RELIEF

**POST-CONVICTION RELIEF - PROCEDURAL BAR - SUCCESSIVE WRITS** - Under the Uniform Post-Conviction Relief Act, any order dismissing a petitioner's motion or otherwise denying relief is a final judgment and is a bar to a second or successive motion; to overcome this bar a petitioner must prove by a preponderance of the evidence that their claims are not barred as successive writs

**CRIMINAL PROCEDURE - GUILTY PLEA - FACTUAL BASIS** - Before a trial court may accept a plea of guilty, the court must determine that the plea is voluntarily and intelligently made and that there is a factual basis for the plea; a factual basis for a guilty plea may be established by a statement of a prosecutor, an actual admission by the defendant, or if the indictment is sufficiently specific

**CRIMINAL PROCEDURE - GUILTY PLEA - VOLUNTARINESS** - A guilty plea is binding if entered voluntarily, knowingly, and intelligently; a petitioner bears the burden of proving by a preponderance of the evidence that the plea was entered into involuntarily

**CRIMINAL PROCEDURE - INDICTMENT - REQUIREMENTS** - An indictment must contain (1) the essential elements of the offense charged, (2) sufficient facts to fairly inform the defendant of the charge against which he must defend, and (3) sufficient facts to enable him to plead double jeopardy in the event of a future prosecution for the same offense; where an indictment tracks the language of the statute, the indictment sufficiently puts the defendant on notice of the charges against him in order to prepare his defense

**CRIMINAL PROCEDURE - INEFFECTIVE ASSISTANCE OF COUNSEL - PROCEDURAL BAR** - A claim for ineffective assistance of counsel can constitute an exception to the procedural bars of the Uniform Post-Conviction Relief Act, to do so a petitioner must show extraordinary circumstances existed worthy of overcoming the procedural bar

### FACTS



In 2014, Adam Brent Wallace was indicted by a Lamar County grand jury on one count of child exploitation. In 2018, Wallace pled guilty and was sentenced to ten years in the custody of the Mississippi Department of Corrections. Subsequently, Wallace filed his first petition for post-conviction collateral relief (“PCR”) which was denied and summarily dismissed by the circuit court. On appeal, the Court of Appeals affirmed the circuit court’s judgment. In 2021, Wallace filed a second PCR petition, asserting that his sentence had expired, he was denied the right to counsel in that he received no meaningful assistance from his attorney and his attorney did not assert a constitutional right to speedy trial claim, the trial court failed to place the State’s sentence recommendation on the record, there was no factual basis to support his guilty plea and that it was not voluntary, and the indictment was defective for failure to allege an essential element of the crime. The circuit court denied and summarily dismissed the second PCR petition. The circuit court found that Wallace’s guilty plea was supported by a factual basis, Wallace entered his plea voluntarily, knowingly, and intelligently, the indictment was not defective, and Wallace’s ineffective assistance of counsel claim was barred as a successive writ and no exception applied. Wallace appealed.

### **ISSUES**

Whether (1) Wallace’s second PCR petition was barred as a successive writ; (2) there was a factual basis for Wallace’s guilty plea; (3) Wallace’s guilty plea was entered into involuntarily; (4) Wallace’s indictment was defective because it failed to include essential elements of the crime charged; and (5) Wallace was provided ineffective assistance of counsel at his plea hearing.

### **HOLDING**

(1) Because the PCR petition was Wallace’s second PCR petition, and because each of the issues Wallace raised in the successive petition could have been raised in his first PCR petition, the petition was successive and also barred by res judicata. (2) Because the wording of the indictment detailed the crime of child exploitation specifically relating to Wallace, because the prosecutor, at the plea hearing, read the charge and made a statement regarding the expected evidence in Wallace’s case, and because Wallace affirmed under oath that he had read and understood the charge against him, a factual basis for Wallace’s guilty plea was established. (3) Because the trial court conducted a detailed interrogation during the plea colloquy, and because Wallace acknowledged under oath that he understood the nature of the charge against him and the consequences of a guilty plea, Wallace failed to show his guilty plea was involuntary. (4) Because the indictment sufficiently tracked the language of the statute and contained all the essential elements of the crime, because the essential elements that Wallace claimed were lacking were not essential elements of the crime of child exploitation, because Wallace’s indictment contained the essential facts to fully notify Wallace of the charge against him, and because Wallace was not entitled to the names of the minor victims, Wallace’s defective-indictment assignment of error was without merit. (5) Because Wallace failed to raise an ineffective-assistance-of-counsel claim based on his attorney’s alleged failure to object to the State’s proffered evidence before the trial court, because Wallace entered his guilty plea voluntarily, knowingly, and intelligently and therefore waived his ineffective-assistance-of-counsel claim, because Wallace confirmed that his attorney counseled and advised him on all possible defenses and his guilty plea was entered freely and voluntarily, because Wallace’s sworn in-court statements supported the voluntary nature of his guilty plea, Wallace failed to present any extraordinary circumstances which would constitute an exception to the successive writ bar; notwithstanding the waiver, because Wallace failed to prove that his attorney’s performance was deficient or that the alleged deficiency was prejudicial, and because the delay in his plea and sentencing did not implicate a delay of proportions sufficient to trigger a Sixth Amendment analysis, Wallace’s ineffective-assistance-of-counsel claim also failed on the merits. Therefore, the Court of Appeals affirmed the judgment of the Lamar County Circuit Court.

**Affirmed - 2019-CP-01149-COA Consolidated With 2019-CT-01735-COA (Nov. 1, 2022)**

Opinion by Presiding Judge Carlton

Hon. Prentiss Greene Harrell (Lamar County Circuit Court)

*Pro se* for Appellant - Alexandra Lebron (Att’y Gen. Office) for Appellee

Briefed by [Morgan Rushing](#)

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## **BOWMAN V. STATE**

### **CRIMINAL - FELONY**

**CRIMINAL PROCEDURE - EVIDENCE - EXPERT WITNESS** - When the testifying witness is a court-accepted expert in the relevant field who participated in the analysis in some capacity, then the testifying witness's testimony does not violate a defendant's Sixth Amendment rights; an expert pathologist is not categorically prohibited from giving her independent opinion about the cause of death because she did not perform the autopsy

**CRIMINAL PROCEDURE - SEARCHES - PROBABLE CAUSE** - Miss. Const. art. 3, § 23 dictates that the government is prohibited from searching a citizen's home unless it first obtains a search warrant after demonstrating probable cause

**CRIMINAL PROCEDURE - SEARCHES - PRIVATE PROPERTY** - When the police come on to private property to conduct an investigation or for some other legitimate purpose and restrict their movements to places visitors could be expected to go, observations made from such vantage points are not covered by the Fourth Amendment

**CRIMINAL PROCEDURE - JURY INSTRUCTIONS - FLIGHT** - In general, evidence of flight is admissible as evidence of consciousness of guilt, and such an instruction may be given if that flight is unexplained and somehow probative of guilt or guilty knowledge

### **FACTS**

Charles and Kathleen Bowman were married. Kathleen's sons eventually reported that they began to receive irregular and strange texts from their mother's phone and that she would not return phone calls. In July 2018, one of Kathleen's sons contacted the Pearl River County Sheriff's Office for a welfare check on Kathleen. Deputy Jerry Fleming conducted a welfare check. He found Charles at the Bowman home, but Charles said that Kathleen was on the coast. Fleming also tried to call Kathleen and no one answered. Later that night, Fleming received a phone call from someone who claimed to be Kathleen. The woman on the phone, after a moment of silence, was able to answer some personal details about Kathleen but did not her social security number. Deputy Jeremy Quave of the Pearl River County Sheriff's office conducted a second welfare check the same night, but this time no one was home. Late that evening, Antwanne Brazley called the Bay St. Louis Police Department reporting that a man, later identified as Charles, was soliciting people to impersonate his wife to call the police on her behalf. Brazley's girlfriend, Alexandria Stevens, made the call impersonating Kathleen to the police. Stevens testified that Charles gave her Kathleen's identification and her personal information so Stevens could impersonate her. Brazley left and called the police and gave them a photo of the car tag from Charles's car. Police obtained a search warrant the next day and found a metal bucket containing human bones and a ring that belonged to Kathleen on top of the bones. Police then searched the burn pit and found human remains that were identified as Kathleen's. Police began a manhunt and found Charles in Utah. There was also blood found in Charles's car that was a match to Kathleen's. Deputy Medical Examiner Investigator Albert Lee prepared Kathleen's death certificate and determined the cause of death was homicide with no evidence of suicide. Deputy Chief Medical Examiner for Mississippi, Dr. Staci Turner, finalized the death certificate and autopsy report. She also testified that the manner of death was homicide. Charles testified that he and Kathleen were at a bank to discuss options for financing their new home, and because the bank did not allow firearms inside, Charles gave his gun to Kathleen who took the weapon and shot herself in the head. Charles did not call the police. Instead, he drove home and cremated the body in accordance with Kathleen's wishes. Charles said that he didn't know how to deal with the death, so he lied to Fleming when he came for the first welfare check. He also said that he wanted time to think about what to do so he ended up in Utah even though he wasn't going anywhere specific. A jury convicted Charles of second-degree murder and tampering with evidence. Bowman moved for a new trial or, in the alternative, judgment notwithstanding the verdict, which the trial court denied. Bowman appealed.

### **ISSUES**

Whether the trial court erred in (1) allowing Dr. Turner to testify regarding Kathleen's cause and manner of death over Charles's Confrontation Clause objections; (2) denying motions to suppress evidence seized in the search of Charles's properties both in Mississippi and in Utah; (3) denying Charles's flight-evidence motion and in turn allowing the State

to refer to any flight evidence and the jury to be instructed on it; (4) refusing to include circumstantial evidence language in other instructions addressing the State's burden of proof; and (5) convicting Charles against the weight of the evidence or with insufficient evidence.

### **HOLDING**

(1) Because the record contained ample evidence demonstrating Dr. Turner's knowledge about the preliminary postmortem report, other reports, and the case materials, because this information supported her final, independent report that she authored and certified, and because Dr. Turner had a plainly sufficient degree of involvement in preparing her own report to satisfy the Confrontation Clause, this issue was without merit. (2) Because the search warrants for both the Mississippi and Utah searches were issued based upon a sufficient showing of probable cause, and because the search warrants were not based on information illegally obtained by trespass, the trial court did not err in denying Charles's motions to suppress. (3) Because Charles's explanation for leaving Mississippi was contradicted by his own actions, and because by his own admission he left Mississippi because he anticipated the police would be returning, the assignment of error was without merit. (4) Because, when read as a whole, the circumstantial-evidence instructions given at trial fairly instructed the jury as to the law, the trial court did not abuse its discretion by refusing additional jury instructions. (5) Because the jury rejected Charles's version of events and convicted him of second-degree murder and tampering with evidence, because allowing the verdict to stand would not sanction an unconscionable injustice, because the State presented more than sufficient evidence to convict Charles of second-degree murder and tampering with evidence, and because a conviction supported primarily by circumstantial evidence did not render the evidence insufficient, the issue did not warrant reversal. Therefore, the Court of Appeals affirmed the judgment of the Pearl River County Circuit Court.

#### **Affirmed - 2020-KA-01371-COA (Nov. 1, 2022)**

Opinion by Presiding Judge Carlton

Hon. Prentiss Greene Harrell (Pearl River County Circuit Court)

Herbert H. Klein for Appellant - Allison Elizabeth Horne (Att'y Gen. Office) for Appellee

Briefed by [Micah McGaha](#)

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