

**MISSISSIPPI SUPREME COURT DECISIONS – APRIL 6, 2023****SUPREME COURT - CIVIL CASES****BELHAVEN SENIOR CARE, LLC V. SMITH****CIVIL - CONTRACT**

**CONTRACTS - ESTOPPEL - DIRECT BENEFITS ESTOPPEL** - For direct benefits estoppel to apply a nonsignatory party must embrace the contract by either knowingly seeking and obtaining direct benefits under the contract, or by seeking to enforce the terms of the contract or asserting claims that must be determined by reference to that contract

**CONTRACTS - MENTAL CAPACITY - CAPACITY PRESUMPTION** - Under Miss. Code Ann. § 41-41-223, an individual is presumed to have the capacity to make healthcare-related decisions; to overcome the presumption, a party must show that a primary physician determined the patient lacked capacity

**HEALTHCARE LAW - PRIMARY PHYSICIAN - DESIGNATIONS** - Under Miss. Code Ann. § 41-41-203(o), a primary physician is one who has been designated by an individual or the individual's agent, guardian, or surrogate, to have primary responsibility for the individual's healthcare or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes the responsibility

**CONTRACTS - MENTAL CAPACITY - AFFIRMATIVE DETERMINATIONS** - Medical records indicating one's diagnoses and symptomology are not the equivalent of an affirmative determination that the patient lacks capacity as defined by Miss. Code Ann. § 41-41-223

**CONTRACTS - LEGAL CAPACITY - THIRD-PARTY BENEFICIARIES** - For a third-party beneficiary to exist, there must first exist a valid contract executed by one with "legal capacity" to enter the contract

**FACTS**

In November 2018, Mary Hayes was admitted to Belhaven Senior Care ("Belhaven") in Hinds County. At that time, Hayes suffered from dementia amongst other ailments. Betty Smith, Hayes's daughter, executed the nursing home's admissions agreement on her mother's behalf. That agreement contained an arbitration clause that provided that all disputes arising out of the admissions or care at Belhaven would be resolved exclusively by binding arbitration. When admitted to Belhaven, a nurse practitioner signed the Admission Physician Orders. Hayes was not evaluated by a physician until eleven days after being admitted to Belhaven. Once Hayes was evaluated, Dr. Timothy Estes noted that she suffered from dementia and was cognitively impaired. Hayes remained a resident at Belhaven until January 2020, when she was transferred to a local hospital. Hayes died in June 2020. Smith then filed a complaint against Belhaven alleging gross negligence, medical malpractice, wrongful death, and statutory survival claims. Belhaven sought to compel arbitration per the admissions agreement. The trial court denied arbitration and found that Smith lacked the legal authority to bind Hayes to the agreement. Belhaven appealed.

**ISSUES**

Whether (1) Smith was estopped from denying the arbitration agreement's validity because she and Hayes benefitted from the admissions agreement; (2) Smith had the legal capacity to contract on Hayes's behalf; (3) Dr. Estes was Hayes's primary physician; (4) Hayes lacked capacity; and (5) Hayes was a third-party beneficiary of the admissions agreement.

**HOLDING**

(1) Because there was no evidence Hayes knowingly did anything related to the contract since Belhaven claimed Hayes lacked capacity when she was admitted, because Smith did not knowingly seek and obtain direct benefits under the contract, and because Smith did not sue to enforce the terms of the contract nor did she assert claims that must be

determined by referencing the contract, Smith was not estopped from denying the arbitration agreement's validity. (2) Because Belhaven did not show that a primary physician determined Hayes lacked capacity, and because Smith was not acting as Hayes's healthcare surrogate, Smith did not have the legal capacity to contract on Hayes's behalf. (3) Because Belhaven presented no evidence of any designation of a primary physician by Smith or anyone with authority to make a designation on Hayes's behalf, because there was no evidence that Dr. Estes treated Hayes before her admission to Belhaven, because Belhaven failed to show Dr. Estes undertook primary responsibility for Hayes's healthcare when she was admitted, because there was no evidence of a contemporaneous patient-primary care physician relationship between Hayes and Dr. Estes, and because records revealed a nurse practitioner signed the Admission Physician Orders, Belhaven did not establish that Dr. Estes was Hayes's primary care physician. (4) Because Hayes was presumed to have healthcare decision capacity, because Belhaven presented no evidence that Dr. Estes ever found that Hayes lacked capacity, and because Dr. Estes's records diagnosing Hayes with dementia and indicating that she was cognitively impaired were insufficient to confer a lack of capacity, Hayes was found to possess adequate capacity to make healthcare decisions. (5) Because there was no valid contract since Smith did not qualify as Hayes's healthcare surrogate, Hayes was not a third-party beneficiary to the admissions agreement. Therefore, the Supreme Court affirmed and remanded the judgment of the Hinds County Circuit Court.

**Affirmed & Remanded - 2022-CA-00050-SCT (Apr. 6, 2023)**

Opinion by Justice Maxwell

Hon. Winston L. Kidd (Hinds County Circuit Court)

Joseph Spencer Young Jr. for Appellants - Richard Paul Williams III, Courtney McReynolds Williams, & Daryl Matthew Newman for Appellee

Briefed by [Morgan Rushing](#)

Edited by [Kayla Tran](#) & [Ashley House](#)

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## MISS. FARM BUREAU CAS. INS. CO. V. PETEET

### CIVIL - INSURANCE

**CIVIL - INSURANCE - SUBROGATION** - Subrogation occurs when one person is substituted in place of another so that the one who is substituted receives the rights of the other for debts, claims, remedies, or securities

**INSURANCE - SUBROGATION RIGHT - PROXIMATE CAUSE** - In the state of Mississippi, the one who is insured can "release the [party] whose negligence is the proximate cause of any damage to the insurer," which causes the insurer to be bound from raising additional claims

**CIVIL - INSURANCE - RIGHT TO SUBROGATION** - Miss. Code Ann. § 83-11-107 states that the insured party "shall be subrogated to the rights of the insured" when the person who caused the injury is paid

### FACTS

Martin Peteet and Maurisha Bland were involved in a car accident in June 2019. In February 2020, Peteet entered into a Full, Final and Absolute Release of All Claims, Settlement and Indemnity Agreement ("Agreement") with Bland's insurance company in exchange for \$25,000. Seven months later, Peteet filed a complaint against his insurer, Farm Bureau, stating that his damages exceeded Bland's \$25,000 policy limit, and his insurer should pay the remainder of his damages since Peteet's policy with Farm Bureau covered up to \$50,000 per accident under Farm Bureau's uninsured motorist (UM) provision. Farm Bureau moved to have the complaint dismissed for failure to state a claim under Miss. R. Civ. P. 12(b)(6). Furthermore, Farm Bureau argued that Peteet could not bring his claim against Farm Bureau because Peteet and Bland's insurance company had already entered into their Agreement without obtaining a waiver of subrogation or some other form of consent from Farm Bureau. Additionally, Farm Bureau stated that subrogation rights were laid out in Miss. Code Ann. § 83-11-107. Under this section, Farm Bureau argued that barring insurance companies from the right of subrogation prohibits the insurer from initiating future proceedings against the insurance company. The Hinds County Court denied Farm Bureau's motion to dismiss. Farm Bureau appealed.

## ISSUE

Whether the Hinds County court erred by denying Farm Bureau's motion to dismiss.

## HOLDING

Because Farm Bureau had a right of subrogation by statute and contract, and because Peteet, Bland, and Mountain Laurel Assurance Company entered into the Agreement which terminated Farm Bureau's right of subrogation without its permission, Peteet was not entitled to any payment from Farm Bureau, and the county court erred in denying the motion to dismiss. Therefore, the Supreme Court reversed and rendered the judgment of the Hinds County County Court.

### **Reversed & Rendered - 2021-IA-01420-SCT (Apr. 6, 2023)**

Opinion by Justice Chamberlin

Hon. Larita M. Cooper-Stokes (Hinds County County Court)

Joe S. Deaton, III & R. Jason Canterbury for Appellant - William Walker, Jr. for Appellee

Briefed by [Sierra Albano](#)

Edited by [Kennedy Gerard](#) & [Mason Scioneaux](#)

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## **MOTON V. CITY OF CLARKSDALE**

### **CIVIL - TORTS-OTHER THAN PERSONAL INJURY & PROPERTY DAMAGE**

#### **TORTS - IMMUNITY OF STATE & POLITICAL SUBDIVISIONS - STATUTE OF LIMITATIONS -**

Under Miss. Code Ann. § 11-46-11 of the Mississippi Tort Claims Act, there is a one-year statute of limitations for all actions brought subject to its provisions

**TORTS - STATUTE OF LIMITATIONS - TOLLING** - An additional 185-day period may be tolled if the plaintiff meets the procedural requirements; filing and service of a notice of a claim will toll the statute of limitations for ninety-five days from the date the statutorily designated official of a political subdivision receives notice of the claim; unless the governmental entity responds with a notice of denial of a claim, a plaintiff must allow for ninety-five days to pass after notice is given before he may file a suit; upon meeting the statutory requirements, a plaintiff has one year and 185 days to file suit, at most

**CIVIL PROCEDURE - STATUTE OF LIMITATIONS - GENERAL PERIOD OF LIMITATION** - A cause of action accrues when it comes into existence as an enforceable claim, and, under the general statute of limitations, Miss. Code Ann. § 15-1-49(1), all actions for which no other period of limitation is prescribed must be brought within three years after the cause of such action accrued

**CIVIL PROCEDURE - MALICIOUS PROSECUTION - STATUTE OF LIMITATIONS** - Malicious prosecution claims have a one-year statutory limitation period

## FACTS

In 2013, Charles Moton served as the Ward Three commissioner of the City of Clarksdale and attended a bimonthly meeting of the Clarksdale Board of Commissioners. Bill Luckett Jr. ("the mayor") allowed each commissioner to speak freely. Moton was two minutes into delivering his comment when the mayor interrupted and ordered Moton to be removed from the meeting for violating Section 11A of the board's decorum policy. Moton was escorted from the meeting by police and arrested for disorderly conduct and failure to comply with the request of a law enforcement officer under Miss. Code Ann. § 97-35-7(1). Moton was tried and convicted by the Clarksdale Municipal Court. Later in 2015, Moton was again removed from a board meeting by police, arrested, and charged with disturbing the peace, public drunkenness, and resisting arrest. Moton was convicted of his second arrest. Moton appealed to Coahoma County County Court again. The charges from both arrests were dismissed for failure to prosecute. In 2021, Moton brought suit against the City of Clarksdale and several individuals ("the defendants"), alleging that his December 23, 2013 and May 26, 2015 arrests violated several of his state constitutional rights. In addition, he claimed he was entitled to monetary damages because the defendants committed numerous common law torts against him, including gross negligence,

intentional infliction of emotional distress, negligent infliction of emotional distress, and civil conspiracy. Morton also filed a malicious prosecution claim. The defendants filed a motion to dismiss and argued Moton’s claims fell under the Mississippi Tort Claims Act (“MTCA”) and provided a one-year statute of limitations and pre-suit notice. The Coahoma County Circuit Court dismissed Moton’s claims because he failed to file suit within the statute of limitations. Moton appealed.

### **ISSUES**

Whether the trial court erred by dismissing Morton’s (1) common law tort claims under Miss. Code Ann. § 11-46-11 of the MTCA; (2) constitutional law claims for failure to file within the statute of limitations; and (3) malicious prosecution claim.

### **HOLDING**

(1) Because Moton failed to provide a notice of claim to the defendants, the one-year statute of limitations could not be tolled beyond one year from the dates of both his arrests, and because Moton filed his common law tort claims outside the one-year statute of limitations and did not comply with the procedural requirements of the MTCA, the trial court did not err by dismissing Moton’s tort claims. (2) Because Moton did not bring his complaint until 2021, more than three years after both his arrests, the constitutional claims were filed outside the requisite statute of limitations and beyond the date of accrual, and the trial court did not err by dismissing Moton’s constitutional law claims. (3) Because Moton waited nearly eleven years to initiate his complaint, Moton failed to file within the one-year statute of limitations applicable to a malicious prosecution claim, and the trial court did not err by dismissing Moton’s malicious prosecution claim. Therefore, the Supreme Court affirmed the judgment of the Coahoma County Circuit Court.

**Affirmed - 2022-CA-00216-SCT (Apr. 6, 2023)**

Opinion by Justice Coleman

Hon. Andrew K. Howorth (Coahoma County Circuit Court)

Ellis Turnage for Appellant - Wilton V. Byars III & Lauren Elizabeth Ward for Appellees

Briefed by [Emilee Crocker](#)

Edited by [Doug Reynolds](#) & [Ashley House](#)

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## **N. BOLIVAR CONSOL. SCH. DIST. V. JONES**

### **CIVIL - REAL PROPERTY**

**PROPERTY - PUBLIC LANDS - SIXTEENTH SECTION LAW** - Sixteenth Section school lands are real property held in trust and managed by local county boards of education and under the general supervision of the secretary of state

**SCHOOL BOARD - OFFICIAL DUTIES - ESTOPPEL** - Enforcing late payments is part of a school board’s official duties and cannot be contracted away; the failure of past officials to collect such payments is not grounds for estoppel in enforcing the payments later

**CIVIL PROCEDURE - ESTOPPEL - LOCAL GOVERNMENTS** - The state and its political subdivisions may be equitably estopped under the proper circumstances; however, no estoppel may be enforced against the state or its counties where the acts of their officers were unauthorized

### **FACTS**

In 2019, Roosevelt Jones paid his annual rent payment for sixteenth section rent property to the North Bolivar Consolidated School District (“District”) late. The District assessed Jones a late penalty of \$11,028.60. Jones brought suit, arguing that the District should be estopped from enforcing the late penalty because the District has a custom of accepting late rent payments without assessing a late penalty. Jones states that he relied on this custom to his detriment. Jones had begun the lease with the formerly separate North Bolivar School District in 2012. But after the consolidation of North Bolivar School District and Mound Bayou Public School District pursuant to Miss. Code Ann. § 37-7-104.1,

Jones entered into a new lease with the District in 2015. The lease stated that a rent payment that was more than thirty days late would be charged an additional fifteen percent of the amount of rent past due. Jones had filed to make his rent payment within thirty days of the due date on two occasions. The first was in 2016 and the next was in 2019. For his missed payment in 2016 the District did not charge Jones a late fee. For the missed payment in 2019, the District did assess the penalty. Jones paid the late fee in April 2019. In June 2020, Jones filed suit against the District and Maurice Smith in his official capacity as superintendent. In March 2021, the District filed a motion for summary judgment on the estoppel claim arguing it did not have a custom of accepting late rent payments without assessing fees. Jones submitted a series of deposit slips from the years 2005-2014 that allegedly showed that he and John Fullilove were permitted to pay rent late and not pay a fee. The District replied with two arguments. First, the District argued that Jones did not meet his burden to establish that the former district accepted late payments without imposing a penalty because the documents did not state the due date of Fullilove's lease payments, and thus, it was impossible to see if the payments were late. Also, there was no evidence that explained the amounts appearing on the deposit slip, leaving no way to know if a late fee was included in the amount deposited. Second, the District argued that even if the evidence established that the District officials customarily accepted late payments without penalty, Jones' estoppel claim would still fail as a matter of law because no estoppel may be enforced against the state or its counties when the acts of officers were unauthorized. The chancery court dismissed Jones' other claims but denied summary judgment on his estoppel claim. In August 2021, the District moved for summary judgment a second time, arguing the failure to enforce the late payment penalty was unauthorized as a matter of law and that the District could not be estopped by the unauthorized actions of its officers. Also, it argued that Jones could not rely on Fullilove's late payments to the former district to establish a course of dealing because the acts and omissions of the former district could not be imputed to the current one because it was a separate and distinct entity. The chancery court once again denied summary judgment, finding that the District did not provide proof that the officers were without authorization to collect late payments and that because the District failed to show that it was no longer operating under contracts of the former district, it failed to show that it was a completely new entity. After the second denial of summary judgment, the District petitioned the Supreme Court for interlocutory appeal, for which the petition was granted.

## **ISSUES**

Whether the North Bolivar Consolidated School District can be estopped by its officers' alleged past failure to enforce a late payment penalty provision in a sixteenth section lease.

## **HOLDING**

Because enforcing late payment penalties was part of a school board's duty as trustee of sixteenth section land and because such enforcement could not be contracted away, any failure of past officials to enforce late payment penalties could not be the basis for equitable estoppel to prevent the District from enforcing the penalty at a later time. Therefore, the Supreme Court reversed and rendered the judgment of the Bolivar County Chancery Court.

### **Reversed & Rendered - 2021-IA-01235-SCT (Apr. 6, 2023)**

Opinion by Justice Coleman

Hon. Watosha Marshall Sanders (Bolivar County Chancery Court)

John Simeon Hooks for Appellants - Boyd P. Atkinson for Appellee

Briefed by [Micah McGaha](#)

Edited by [Kara Edwards](#) & [Mason Scioneaux](#)

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## **OTUSESO V. EST. OF MASON**

### **CIVIL - WILLS, TRUSTS, AND ESTATES**

**WILLS & ESTATES - ADMINISTRATOR - REQUIRED QUALIFICATIONS** - Under Miss. Code. Ann. § 91-7-65, letters of administration shall not be granted to a person under the age of eighteen years, of unsound mind, or convicted of any felony



**WILLS & ESTATES - ADMINISTRATOR - REVOCATION BY CHANCELLOR** - A chancellor has wide discretion in the revocation of administrators, within the limits of the law

**WILLS & ESTATES - ADMINISTRATOR - APPOINTMENT BY CHANCELLOR** - A chancellor has wide discretion in the selection of the person(s) to be appointed administrator(s) of an estate except in cases made mandatory by the statute

### **FACTS**

In November 2015, Delores Mason sought treatment for a skin condition from several physicians including Dr. Otuseso. Mason's condition worsened and she died. In 2017, Helen McNeal filed a Petition for Grant of Letters of Administration in the Chancery Court of Coahoma County. McNeal claimed that she was more than twenty-one years old, that she had not been convicted of a felony, and that she was Mason's daughter and sole heir. In 2018, the chancellor appointed McNeal as administratrix of Mason's estate and also authorized McNeal to file a wrongful death suit on behalf of the estate against Otuseso. In response to one of Otuseso's interrogatories about the identities of wrongful death beneficiaries, McNeal answered that she was the only beneficiary. McNeal, as administratrix of Mason's estate, summoned all unknown beneficiaries by publication, and a hearing for determination of heirs was held in 2018. Erma Mason and James Mason appeared at the hearing. The chancellor determined that Erma and James were the decedent's siblings and heirs at law. In 2021, Erma and James testified in depositions and James revealed that McNeal had been living with Delores Mason but was neither Delores's natural daughter nor her adopted daughter. After the depositions, Otuseso investigated the qualifications of McNeal as administratrix of the estate and determined that McNeal had been convicted of a felony, which disqualified her as administratrix. Otuseso then filed a Motion to Intervene and Strike Letters of Administration. In response, McNeal admitted that Erma and James were the decedent's real heirs and should be substituted in her stead in the estate and in the wrongful death action, she admitted that she had made false statements claiming that she was the sole heir of the estate, and she admitted to falsely claiming she had not been convicted of a felony. Otuseso disagreed with the substitution of Erma and James because neither had moved to be substituted as administrator of the estate. The chancellor then determined that Otuseso's motion to intervene was untimely. The Chancellor also removed McNeal as administratrix and replaced her with the decedent's actual heirs, Erma and James. Otuseso appealed.

### **ISSUES**

Whether the chancery court erred (1) by substituting Erma Mason and James Mason as administrators of Delores Mason's estate; and (2) by denying Otuseso's motion to intervene in the estate and declare the estate void ab initio.

### **HOLDING**

(1) Because McNeal had falsely concealed her felony conviction, because Miss. Code Ann. § 91-7-65 prohibited anyone with a felony conviction from serving as administrator of an estate, and because the chancellor had wide discretion in the revocation of the administratrix, the chancery court did not err by revoking McNeal as administratrix. Furthermore, because the chancellor had wide discretion in the selection of the persons to be appointed administrators of the estate, and because Erma Mason and James Mason would have suffered insurmountable prejudice if the chancellor was unable to appoint successor administrators after Mason was discovered to be an unqualified administratrix, the chancery court did not err by substituting Erma Mason and James Mason as administrators of Delores Mason's estate. (2) Because the chancery court did not abuse its discretion in removing McNeal as administratrix, and because Otuseso's intervention was for the limited purpose of challenging McNeal's suitability as administratrix, the intervention issue was moot and the Supreme Court declined to address it. Therefore, the Supreme Court affirmed and remanded the judgment of the Coahoma Chancery Court.

#### **Affirmed & Remanded - 2021-IA-01099-SCT (Apr. 6, 2023)**

Opinion by Presiding Justice Kitchens

Hon. Willie James Perkins, Sr. (Coahoma County Chancery Court)

Michael Earl Phillips & Jacob O. Malatesta for Appellant - David D. O'Donnell & Ellis Turnage for Appellees

#### **Consolidated with:**

#### **Dismissed as Moot - 2022-CA-00087-SCT (Apr. 6, 2023)**

Hon. Willie James Perkins, Sr. (Coahoma County Chancery Court)

Michael Earl Phillips & Jacob O. Malatesta for Appellant - David D. O'Donnell & Ellis Turnage for Appellees

## STEWART V. MISS. BAR

### CIVIL - BAR MATTERS

**BAR MATTERS - REINSTATEMENT - REQUIREMENTS** - Before an attorney may be reinstated, five jurisdictional requirements must be met; the attorney must: (1) state the cause or causes for suspension or disbarment, (2) give the name and current address of all persons, parties, firms, or legal entities who suffered pecuniary loss due to the improper conduct, (3) make full amends and restitution, (4) show that he has the necessary moral character for the practice of law, and (5) demonstrate the requisite legal education to be reinstated to the privilege of practicing law

**BAR MATTERS - REINSTATEMENT - FACTORS** - The Court may consider the Bar's position as to reinstatement as a factor in determining whether to grant the petition for reinstatement

### FACTS

In May 2003, Joe Gregory Stewart pleaded guilty to one felony count of conspiracy to commit extortion under color of official right for paying a Tunica County Sheriff's deputy to intentionally absent himself from Stewart's clients' DUI proceedings, in order to get his clients' cases dismissed. Stewart self-reported his actions to the Federal Bureau of Investigations and was sentenced to three years on probation and ordered to pay a fine of \$20,000 and a special assessment of \$100. After the guilty plea, the Mississippi Bar ("Bar") filed a complaint recommending Stewart be disbarred. Stewart failed to respond to the Bar's complaint, which resulted in his disbarment in September 2004. In January 2008, Stewart filed his first petition for reinstatement, which was opposed by the Bar for the offense being too serious to be considered for reinstatement. The petition was denied by the Supreme Court for a lack of sufficient evidence to show a fundamental change in character. In December 2009, another petition for reinstatement was filed, which was opposed by the Bar, which asserted Stewart had been untruthful and misleading during the Bar's investigation of the petition. The Court again denied the petition, finding that Stewart was not forthcoming about a prior expunged conviction from his record and did not cooperate with the Bar in its investigation of the expungement. In January 2017, Stewart filed a third petition, which was opposed by the Bar for his misconduct being too damaging to the structure of the legal system to allow reinstatement. The Court again denied Stewart's petition for not meeting the jurisdictional requirements of Rule 12 of the Rules of Discipline for the Mississippi State Bar and for not providing clear and convincing evidence of rehabilitation in conduct and character to convince a reasonable person that he had been reformed. Three years later, in April 2022, Stewart filed the fourth and current petition for reinstatement.

### ISSUES

Whether Stewart has rehabilitated himself in conduct and character since the disbarment?

### HOLDING

Because Stewart set forth the reasons for disbarment, but failed to take full responsibility for his actions that led to disbarment, because there was no evidence to support an assertion or claim of sabotage in the third petition of reinstatement, because the claim of confidentiality in the third petition was addressed and disregarded previously, because evidence of numerous instances of unprofessionalism from Stewart's role as the executive director of Beauvoir showed he conducted himself in an unprofessional manner and displayed a sarcastic, offensive, and demeaning management style, because Stewart disregarded and disobeyed the Secretary of State's Office's and Beauvoir's counsel's advice that by statute he could not have access to or control of charity funds due to his felony convictions, because his social media posts further showed a disregard for Beauvoir's best interests by using derogatory and demeaning language, which the record reflected, and because Stewart continued to deflect responsibility by making excuses, blaming others, and focusing on how others allegedly influenced the outcome and consequences of his illegal misconduct, Stewart did not meet the jurisdictional requirements of Rule 12 and did not provided clear and convincing evidence that he

rehabilitated himself in conduct and character since the disbarment. Therefore, Stewart's fourth petition for reinstatement to the practice of law is denied.

**Reinstatement Denied - 2022-BR-00382-SCT (Apr. 6, 2023)**

En Banc Opinion by Justice Griffis

Michael Clayton Barefield for Petitioner - Adam Bradley Kilgore & Melissa Selman Scott for Respondent

Briefed by [Kayla Tran](#)

Edited by [Kennedy Gerard](#) & [Mason Scioneaux](#)

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## *SUPREME COURT - CRIMINAL CASES*

### **SILLS V. STATE**

#### **CRIMINAL - FELONY**

**CONSTITUTIONAL LAW - ILLEGAL SEARCH & SEIZURE - STANDING** - A search of an arrestee's vehicle will be unreasonable unless police obtain a warrant or show that an exception to the warrant requirement applies; however, a defendant lacks standing to object to the alleged illegal search of a vehicle if the defendant is the thief of the vehicle subject to the search

**CONSTITUTIONAL LAW - ILLEGAL SEARCH & SEIZURE - INVENTORY SEARCH** - It is permissible for officers to conduct an inventory search of a vehicle when the circumstances require it to be impounded by the officers, regardless of the reason for the necessary impoundment; this is an administrative task designed to produce an inventory, and an officer's testimony about the existence of policy or practice governing the inventory search sufficiently establishes the constitutionality of the search

**CRIMINAL LAW - CONSTRUCTIVE POSSESSION - INTENT** - Constructive possession is established by showing that contraband was under the dominion and control of the defendant; sufficient facts must warrant a finding that the defendant was aware of the presence and character of the contraband and was intentionally and consciously in possession of it

**EVIDENCE - ADMISSIBILITY - NARCOTICS TESTING** - A forensic chemist is generally not required to test all of the suspected narcotic substance to opine that the recovered substance as a whole contains narcotics

#### **FACTS**

Todd Jackson, the owner of Tower and Tower Construction, called the Sheriff's Department to report his Ford F-350 was stolen and had been missing for three days. Jackson informed investigating officers that his employee David Sills had taken the truck. Sills was a foreman for Tower and Tower Construction. Sills was taken into custody by Starkville Police Department after officers spotted Jackson's truck and pulled over it. While at the Starkville police station, Sills told officers that he had been smoking crystal meth all day, was driving his boss's truck, and had not shown up for work. Officers Lovrent Gaines and Tyler Davis conducted an inventory search of the truck prior to having it towed. Officer Gaines recovered a pipe, which contained a rock-like substance, as well as a rock-like substance between the driver's seat and the console. Officer Davis tested the rock-like substance with a pill kit. The substance tested positive for methamphetamine. The rock-like substance was then transferred to the crime lab for further analysis. At trial, Officer Gaines testified that the inventory search met standard procedures at the police department and that the truck was searched because the truck was reported stolen and the owner of the truck was not present to move it. While Officer Gaines could not recall if he used an inventory sheet during the search per department policy and procedure, he stated he documented in his report what was recovered from the truck. Claudette Gilman of the crime lab was accepted as an expert in controlled substance analysis and testified that she tested and analyzed the evidence and found it contained 2.09 grams of methamphetamine. On cross-examination, Gilman testified she could not break off a piece for further testing. On redirect, Gilman testified she was not required to test every piece of substance in the evidence bag submitted



to the lab per standard practice accepted in the scientific community. Furthermore, the jury examined the same rock-like substance evidence submitted to the lab. According to Sills, he took the Ford F-350 to Texas to pick up his personal truck. Once he arrived in Texas, he realized Jackson had taken his truck to Mississippi. On the way to return the truck, he was stopped and taken into custody. Sills said he did not know there was methamphetamine in the F-350 because the truck was clean and the truck's mats were black so it would have been hard to know there was methamphetamine on the floor. Sills claimed he was never informed about any methamphetamine found in the F-350. Sills stated he had never used methamphetamine in his life so he did not know how methamphetamine looked. The jury found Sills guilty of possession of methamphetamine. Sills appealed.

### **ISSUES**

Whether (1) the trial court erred by denying Sills's pretrial motions to suppress evidence and to dismiss the case; (2) the State failed to prove constructive possession; and (3) the State failed to prove the weight of the methamphetamine.

### **HOLDING**

(1) Because Sills was in a stolen truck, because the inventory search was conducted per police department policy and procedure, and because Sills failed to establish that he had a legitimate expectation of privacy in the reportedly-stolen truck and the motion to suppress based on automatic standing was without merit, the trial court did not err by denying Sills's pretrial motions to suppress evidence and to dismiss the case. (2) Because Sills was in possession of the truck, by himself, for nearly three days, because evidence of methamphetamine was found in the truck following Sills's arrest, because Sills was in close proximity to methamphetamine and paraphernalia used to smoke the methamphetamine, because the State introduced evidence that Sills admitted he had smoked crystal meth all day, and because a jury could reasonably find that Sills was consciously aware of and was intentionally in possession of the methamphetamine, the State proved Sills had constructively possessed the methamphetamine. (3) Because Gilman testified that the rock-like substance submitted were all the same substance and were the same as what she had tested, and because the same rock-like substance was presented to the jury as evidence for its consideration, the jury could have reasonably inferred beyond a reasonable doubt that the untested samples contained also contained methamphetamine as those conclusively tested, and the State proved the weight of the methamphetamine was 2.09 grams. Therefore, the Supreme Court affirmed the judgment of the Oktibbeha County Circuit Court.

**Affirmed - 2021-KA-00317-SCT (Apr. 6, 2023)**

Opinion by Justice Beam

Hon. James T. Kitchens Jr. (Oktibbeha County Circuit Court)

Mark Andrew Cliett for Appellant - Barbara Wakeland Byrd (Att'y Gen. Office) for Appellee

Briefed by [Kachla Outlaw](#)

Edited by [Thomas Simpson](#) & [Ashley House](#)

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## **MISSISSIPPI COURT OF APPEALS DECISIONS – APRIL 4, 2023**

### ***COURT OF APPEALS - CIVIL CASES***

#### **GILLENWATER V. REDMOND**

##### **CIVIL - DOMESTIC RELATIONS**

**FAMILY LAW - ALIMONY - MODIFICATION & TERMINATION** - When considering a party's petition to modify or terminate an award of periodic alimony, a chancellor must first determine whether an unforeseeable and material change in circumstances occurred since the entry of the initial divorce decree

**FAMILY LAW - ALIMONY - COHABITATION PRESUMPTION** - Proof of cohabitation creates a presumption that a material change in circumstances has occurred and this presumption shifts the burden to the

recipient spouse to produce evidence contradicting mutual financial support; the paying spouse must still show the cohabitation results in a situation of mutual support between the recipient spouse and another individual which alters the recipient spouse's financial needs before alimony can be modified

**FAMILY LAW - ALIMONY - COURT'S DISCRETION** - So long as there is substantial evidence in the record that, if found credible by the chancellor, would provide support for the chancellor's decision, the Court of Appeals may not intercede simply to substitute its collective opinion for that of the chancellor

### **FACTS**

In June 2018, Jason Gillenwater was ordered to pay permanent alimony of \$700 per month to Wanda Redmond as part of their divorce judgment. At the time of the divorce, Gillenwater was earning almost \$9,000 per month as a welder and Redmond was earning around \$500 per month as a childcare provider. In February 2021, Gillenwater filed a petition to terminate or modify the alimony based on a material change in circumstances. Gillenwater argued there were two material changes. First, Gillenwater had been laid off and was still unemployed. Second, it was stipulated that Redmond was cohabiting with her boyfriend Rouse who, according to Gillenwater, provided financial support. In September 2021, a trial was held for Gillenwater's petition. In December 2021, the chancery court entered a final judgment finding that Gillenwater did not meet the burden of proof establishing a material change of circumstances of his employment status that would require a reduction or termination of his alimony obligation. Additionally, the chancery court found that Redmond did not meet the burden of establishing that there was no mutual support from Rouse. The chancery court found that the support from splitting certain living expenses and the in-kind services Redmond received from the cohabitation reduced her financial need for alimony, but did not eliminate it. As a result, the chancery court modified the alimony to \$400 per month. Gillenwater appealed.

### **ISSUE**

Whether the chancery court erred in modifying rather than terminating alimony based on Redmond and Rouse's cohabitation and the finding of mutual financial support and in-kind services.

### **HOLDING**

Because even with Rouse's financial contributions, Redmond would struggle to cover her monthly expenses without alimony payments from Gillenwater, the support Redmond received from the cohabitation reduced but did not eliminate her financial need for alimony, and the chancery court did not err in modifying rather than terminating alimony. Therefore, the Court of Appeals affirmed the judgment of the Jackson County Chancery Court.

**Affirmed - 2021-CA-01378-COA (Apr. 4, 2023)**

Opinion by Judge Emfinger

Hon. Tanya L. Hasbrouck (Jackson County Chancery Court)

Mark V. Knighten for Appellant - Susan Weldon Culpepper for Appellee

Briefed by [Katherine Hancock](#)

Edited by [Emilee Crocker](#) & [Ashley House](#)

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## **KIRK V. NEWTON**

### **CIVIL - PERSONAL INJURY**

**CIVIL PROCEDURE - JUDGMENT NOTWITHSTANDING THE VERDICT - CONFLICTING EVIDENCE** - It is the jury's job, not the appellate courts', to weigh the evidence, assess witness' credibility, and resolve conflict between evidence

**JURIES - JURY IMPARTIALITY - BIAS, PASSION, AND PREJUDICE** - Proof in the record of actual bias, passion, and prejudice in jurors is necessary to support a motion for a new trial due to jury impartiality

**JURIES - VOIR DIRE - ADDRESSING IMPARTIALITY** - Potential bias, passion, and prejudice discovered in jurors should be addressed via a request to the trial court for sidebar conferences, to squash venire, or mistrial

**EXPERT WITNESSES - ECONOMIC LOSS CALCULATIONS - NATIONAL AVERAGES** - National averages may be used to calculate lost wages if there is an actual evidentiary basis to support the use of the national averages

**DAMAGES - REMITTITUR - JURY FINDINGS** - Appellate courts do not disturb a jury's award of damages unless the award is shocking to the conscience or without an evidentiary basis

**EVIDENCE - LIABILITY INSURANCE - OBJECTIONS & APPEALS** - Mentions of insurance not intended to prove negligence and which are not objected to at trial are waived on appeal

## **FACTS**

In August 2017, Ashley Newton was seriously and permanently injured in an automobile accident involving her and an automobile hauling trailer driven by David Kirk and owned by I.B. Logistics. Newton was airlifted from the scene to a hospital, where she underwent treatment for fractures in numerous places of her body. Later, Newton filed a complaint against Kirk and I.B. Logistics ("Kirk") alleging that Kirk negligently caused his truck and trailer to drift into Newton's lane, caused Newton's vehicle to strike the rear of Kirk's trailer, and ultimately caused Newton to incur at least \$240,000.00 in medical expenses and the loss of an unborn child. Kirk's answers denied liability and argued that Newton was negligent herself because she failed to exercise reasonable care. The trial was held in September 2020. During voir dire, Kirk's counsel had multiple exchanges with potential jurors who expressed fear of commercial trucks, a belief that commercial drivers owe a higher responsibility to avoid accidents, and opinions that eighteen-wheelers should have their own roads or lanes. Kirk's counsel did not follow up with any of the potential jurors, did not request the court to squash the venire, and did not request a mistrial due to potential bias or prejudice from comments made by the jurors. Nevertheless, jurors heard conflicting accounts of the accident from each party. Newton testified that she was in the southbound right-hand lane when Kirk "passed me and jumped over in my lane." Newton stated that she never saw the brake lights or turn signal activate on Kirk's trailer. Newton also called a Yazoo County Sheriff's Deputy who testified that skid marks were present in both the left and right-hand lanes. Meanwhile, Kirk testified that he and Newton were both in the left-hand lane, that he slowed down after seeing a trash can in the road, and that Newton swerved to the right, striking the rear side of his trailer. Kirk's version of events was supported by the testimony of an expert witness, Dr. Preston Scarber Jr., who conducted a reconstruction study of the accident which indicated that the wreck "most likely" occurred in the left-hand lane. Regarding damages, Newton introduced testimony from Dr. Michael Graves, who stated that Newton had lost seventy-one percent use of her right leg and twenty-eight percent loss of her entire body as permanently impaired. Dr. Graves concluded that Newton could not return to her prior employment and could only perform "sedentary work" as a result of the accident. Additionally, Newton introduced testimony from Dr. Howard Katz to show extensive future medical needs and assistance in daily activities. Elizabeth Martina, a certified rehabilitative counselor and life-care planner, testified as an expert about the vocational and life-care planning assessments she conducted with Newton and determined that Newton could not return to her previous job as a licensed practical nurse ("LPN") and would face future medical costs as high as \$784,229.00. James Koerber, an expert in economics, testified that Newton's total lost wages, future, and past, were valued at \$1,170,958.00. Koerber arrived at this calculation using national wage averages for LPNs and Newton's actual earnings, rather than exclusive reliance on Newton's wage history because Newton had only worked as an LPN for four months prior to the accident. Kirk objected to Koerber's use of national statistics. The trial court overruled Kirk's objection, finding Koerber qualified as an expert under Miss. R. Evid. 702. Despite this, Koerber emphasized that the national average was less than Newton's annualized wage-earning figures. Koerber ultimately determined that Newton's mitigated future lost wages amounted to \$604,121.00. Meanwhile, Kirk introduced expert witness testimony from Bruce Brawner who stated that Newton's post-incident wage earning capacity was approximately \$25,605.00 per year. Additionally, Kirk introduced expert witness testimony from Dr. Gerald Lee, an expert in economics, who stated that Newton's life-care plan would range between a cost of \$150,426.00 and \$169,229.00. Dr. Lee also testified that Newton's lost wages amounted to \$34,113.00. Dr. Lee did not annualize Newton's prior salary or use national average wages for LPNs in arriving at his calculation. After jury instructions and closing arguments, the jury returned a verdict finding Kirk one-hundred percent at fault and awarding \$2,759,094.32 in damages to Newton. Kirk filed unsuccessful motions for a judgment notwithstanding the verdict ("JNOV") or a new trial or in the alternative, remittitur. Kirk appealed.

## **ISSUES**

Whether (1) the trial court erred in overruling Kirk's motion for a JNOV because the evidence was insufficient to support the jury's verdict; (2) a new trial was warranted because the verdict was against the overwhelming weight of the evidence or was the product of bias, passion, and prejudice; (3) Newton's experts' opinions on future lost wages should have been excluded based on the expert improperly relying upon national averages rather than Newton's own wage history; (4) the trial court erred in denying Kirk's motion for remittitur; and (5) Kirk should be entitled to a new trial because Newton improperly interjected the issue of insurance.

### **HOLDING**

(1) Because the jury heard testimony from both Newton and Kirk and their accounts of the accident and from an accident reconstructionist, and because the jury sorted the evidence, judged the credibility of the witnesses, and made a factual determination that Kirk was at fault for the accident, Kirk's argument that the evidence was insufficient to support a conviction was meritless, and the trial court correctly overruled Kirk's motion for a JNOV. (2) Because nothing in the record suggested that the jury acted contrary to its instructions, because Kirk never followed up with individuals who responded to his questions to determine if their personal opinions could or would affect their impartiality, because Kirk did not ask the court to squash the venire or for a mistrial due to potential bias or prejudice due to comments made by jurors during Kirk's questioning, and because there was no proof in the record of any bias, passion, or prejudice within the jury's verdict, the jury's verdict was not contrary to the overwhelming weight of evidence or the product of bias, passion, or prejudice. (3) Because the "battle of the experts" and determining the admissibility between two expert's testimony was not to be reconsidered on appeal, because there was an actual evidentiary basis to support Newton's experts' use of national average wages, because Newton's annualized actual wages were similar to and greater than the national average relied on by Newton's experts, the issue of whether Newton's experts' opinions on future lost wages should have been excluded based on the expert improperly relying upon national averages rather than Newton's own wage history was without merit. (4) Because there was actual and substantial testimony that proved the figures the jury awarded, and because the severity of Newton's injuries could have allowed a jury to easily conclude that Newton suffered substantial pain and suffering and loss of enjoyment of life, the damages awarded by the jury were not excessive, and the trial court did not abuse its discretion in denying Kirk's motion for remittitur. (5) Because Newton's mention of insurance in front of the jury was not admitted to prove Kirk's negligence as prohibited by Miss. R. Evid. 411, because Kirk did not object to Newton's statement relating to her lack of insurance, because Kirk only asked the trial court to instruct Newton to not mention insurance, and because Kirk made no other further requests or objections pertaining to Newton's mention of insurance, Kirk's argument that Newton improperly interjected the issue of insurance was waived. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Circuit Court.

### **DISSENT**

Judge Greenlee argued that the trial court abused its discretion by denying Kirk's motion for a new trial because Newton mentioning insurance had an insidious effect on the jury. He argued the verdict was clearly the result of bias, passion, and prejudice pointing to the jurors' opinions and fears of commercial vehicles. Lastly, he argued the verdict was against the overwhelming weight of evidence because Newton's version of the facts was only supported by the testimony of Newton and the Yazoo County Sheriff's Deputy, with photographic evidence not comporting with Newton's version of events. Meanwhile, Kirk, an additional officer, and Dr. Scarber's accident reconstruction all offered evidence that the wreck occurred in the left lane.

#### **Affirmed - 2021-CA-00684-COA (Apr. 4, 2023)**

En Banc Opinion by Judge Lawrence - Dissent by Judge Greenlee

Hon. Winston L. Kidd (Hinds County Circuit Court, First Judicial Dist.)

Keith D. Obert, William F. Brown, George Martin Street Jr., & Robert S. Mink for Appellants - James W. Nobles Jr., Edward Blackmon, & Bradford Jerome Blackmon for Appellee

Briefed by [Holdon Guy](#)

Edited by [Emilee Crocker](#) & [Ashley House](#)

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## ROBINSON V. MISS. DEP'T OF CORR.

### CIVIL - STATE BOARDS & AGENCIES

**ADMINISTRATIVE LAW - STATE AGENCIES - JUDICIAL REVIEW PETITION** - Under Miss. Unif. Cir. & Cnty. Ct. R. 5.04, a petition for judicial review filed pursuant to Miss. Code Ann. § 47-5-807 requires that the party desiring to appeal a decision from a lower court must file a written notice of appeal with the circuit court clerk and a copy of that notice must be provided to all parties or their attorneys of record and the lower court or lower authority whose order or judgment is being appealed

**ADMINISTRATIVE LAW - STATE AGENCIES - EXHAUSTION OF REMEDIES** - Under Miss. Code Ann. § 47-5-803(2), no state court shall entertain an offender's grievance or complaint which falls under the purview of the administrative review procedure unless and until such offender shall have exhausted the remedies as provided in such procedure

### FACTS

Calvin Lee Robinson was sentenced to thirty years for statutory rape, with twenty years to be served in the custody of the Mississippi Department of Corrections ("MDOC"). Robinson applied to participate in MDOC's Meritorious Earned Time program which eligible inmates can participate in and receive credit toward their sentence. After his application was denied, Robinson filed for Judicial Review in the Leflore County Circuit Court which was then transferred to Carroll County Circuit Court. The Leflore County Circuit Court's transfer order included its observation that Robinson failed to attach proof to his petition that he had attempted to resolve the matter through the Administrative Remedy Program. In October 2020, the Carroll County Circuit Court ordered the MDOC to respond to Robinson's petition for judicial review but there was no indication that the court order was sent to MDOC's counsel. However, the record did not contain a response from the MDOC and there was no indication that the MDOC made an appearance. In December 2021, the circuit court dismissed Robinson's petition for lack of personal jurisdiction because he failed to provide the MDOC with notice of his petition, as required by Miss. Unif. Cir. & Cnty. Ct. R. 5.04. The circuit court also held that Robinson failed to provide proof that he exhausted all other remedies prior to seeking judicial review. Robinson appealed.

### ISSUES

Whether the circuit court erred by (1) finding that it had no personal jurisdiction over MDOC and (2) dismissing Robinson's petition because Robinson failed to provide proof that he exhausted all other administrative remedies prior to seeking judicial review.

### HOLDING

(1) Because Robinson failed to provide proper notice to MDOC of his petition for judicial review as required by Miss. Unif. Cir. & Cnty. Ct. R. 5.04, the circuit court did not err by finding that it had no personal jurisdiction over Robinson. (2) Because Robinson failed to attach any proof to his petition that he had exhausted all other remedies, and because there was nothing in the record to show Robinson exhausted all remedies prior to seeking judicial review, the circuit court did not err by dismissing his petition. Therefore, the Court of Appeals affirmed the judgment of the Carroll County Circuit Court.

### **Affirmed - 2022-CP-00018-COA (Apr. 4, 2023)**

Opinion by Presiding Judge Carlton

Hon. George M. Mitchell Jr. (Carroll County Circuit Court, Second Judicial Dist.)

*Pro se* for Appellant - Tabatha Amanda-Faye Baum (Att'y Gen. Office) for Appellee

Briefed by [Constance Hartline](#)

Edited by [Doug Reynolds](#) & [Ashley House](#)

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

### **EVERETT V. STATE**

#### **CIVIL - POST-CONVICTION RELIEF**

**CRIMINAL PROCEDURE - APPEALS - STATUTE OF LIMITATIONS** - Under the Uniform Post-Conviction Collateral Relief Act (UPCCRA), a post-conviction relief motion following the entrance of a guilty plea must be filed within three years after the judgment was entered

**CRIMINAL PROCEDURE - SENTENCING - ILLEGAL SENTENCE** - A person's sentence in a criminal trial is not illegal so long as it does not exceed the statutory maximum sentence at the time of the judgment

**CIVIL PROCEDURE - RELIEF - EARNED-DISCHARGE CREDITS** - A prisoner must challenge a Mississippi Department of Corrections policy or decision in the circuit court of the county where the prisoner resides

#### **FACTS**

In January 2011, Pervis Everett pleaded guilty to one count of possession of cocaine with intent to distribute. Subsequently, Everett was sentenced to thirty years in the custody of the Mississippi Department of Corrections ("MDOC"), with five years to serve and twenty-five years suspended, followed by ten years of post-release supervision ("PRS") under the supervision of MDOC. In June of 2011, Everett was released on PRS. In May 2018, Everett's field officer filed a petition for revocation of his PRS. After the hearing on the matter, the court revoked Everett's PRS and ordered him to serve the twenty-five-year suspended sentence. The judge explained that Everett had violated the conditions of his probation by feloniously possessing methamphetamine and failing to pay the fines as ordered by his sentence. In July 2021, Everett filed a post-conviction relief ("PCR") motion, asserting that his original sentence was illegal because it exceeded the maximum statutory penalty. Additionally, Everett claimed that the denial of his earned-discharge credits violated his due process rights. The court found that Everett's motion was time-barred and he failed to present any evidence to support a statutory exception to the time-bar. Despite the time-bar, the court reviewed Everett's illegal sentence claim and deemed it meritless. As such, the court entered an order denying relief and dismissed Everett's PCR motion. Everett appealed.

#### **ISSUES**

Whether the circuit court erred by denying (1) Everett's PCR motion based on the statutory time-bar; (2) Everett relief from an allegedly illegal sentence; and (3) Everett's earned-discharge credits in violation of his due process rights.

#### **HOLDING**

(1) Because Everett filed his PCR motion more than ten years after the judgment was entered, violating the Uniform Post-Conviction Relief Act's prohibition on PCR motions after 3-years following judgment, his motion was time-barred, and as a result, the trial court did not err by denying the motion. (2) Because at the time of Everett's guilty plea, the maximum sentence for possession of cocaine with intent to distribute a Schedule I or II controlled substance was thirty years, the thirty-year sentence did not exceed the statutory maximum and was not illegal. (3) Because judicial review of the final MDOC Administrative Remedy Program decision in the county where Everett resides, rather than a PCR motion in the county of the filer's choice, was the proper way to challenge the accrual of earned-discharge credits, and because Everett failed to comply with the terms of his parole by both possessing methamphetamine and not paying his fees and fines, his due process rights were not violated by the denial of earned-discharge credits. Therefore, the Court of Appeals affirmed the judgment of the Wayne County Circuit Court.

**Affirmed - 2021-CP-01385-COA (Apr. 4, 2023)**

Opinion by Presiding Judge Carlton

Hon. Robert Thomas Bailey (Wayne County Circuit Court)

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

Briefed by [Caitlyn Dills](#)

Edited by [Kara Edwards](#) & [Mason Scioneaux](#)

## WINTERS V. STATE

### CIVIL - POST-CONVICTION RELIEF

**POST-CONVICTION RELIEF - STATUTE OF LIMITATIONS - FAILURE TO FILE** - A motion for post-conviction relief must be filed within three years following the entry of judgment of conviction, and failure to file within the three-year period procedurally bars appeal of the dismissal of the motion

**POST-CONVICTION RELIEF - PROCEDURAL BAR - EXCEPTIONS** - The denial of a post-conviction relief motion is a final judgment and bars subsequent requests for post-conviction relief unless the petitioner can show (1) there are issues with the defendant's supervening mental illness prior to the execution of a death sentence; (2) there has been an intervening decision of the United States Supreme Court or of the Mississippi Supreme Court, which would require a different outcome or sentence; (3) there is newly discovered evidence, which was not previously discoverable, that would have been practically conclusive if it were available at trial; or (4) the defendant claims that his sentence has expired, or his probation, parole, or conditional release has been unlawfully revoked

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

**POST-CONVICTION RELIEF - EVIDENTIARY HEARING - NEWLY DISCOVERED EVIDENCE** - Newly discovered evidence warrants a new trial if (1) the evidence will probably produce a different result or verdict; (2) the evidence has been discovered since trial; (3) the evidence could not have been discovered before trial by the exercise of due diligence; (4) the evidence addresses a material issue; and (5) the evidence is not merely cumulative or impeaching

**POST-CONVICTION RELIEF - PROCEDURAL BAR - WAIVER** - Issues not raised in a motion for post-conviction relief are procedurally barred on appeal

### FACTS

Clinton Winters pled guilty to felony check fraud in September 2017 and was sentenced to three years of non-reporting post-release supervision. Winters filed his first post-conviction relief ("PCR") motion in November 2017, and the trial court dismissed the motion. In 2019, Winters violated the terms of his post-release supervision, and the State moved to revoke Winters' post-release supervision. The trial court granted the State's motion. Winters then filed a second PCR motion challenging his felony check fraud conviction claiming that his conviction was illegal because Winters should have been convicted of a misdemeanor, not a felony. Winters further alleged there was evidence that would show he reimbursed the victim the full amount owed. The trial court dismissed Winters' second PCR motion as time-barred, successive, and without merit. Winters appealed.

### ISSUES

Whether (1) the trial court erred in dismissing Winters' second post-conviction relief motion and (2) Winters' additional claims on appeal were meritorious.

### HOLDING

(1) Because the three-year statute of limitations ran after the entry of judgment of Winters' conviction, because Winters could not satisfy one of the statutory exceptions to the limitations period or successive motions bar, because Winters voluntarily pled guilty to the crime charged, and because the alleged new evidence was available at the time of Winters' guilty plea, Winters' second PCR motion was successive, time-barred and lacked merit, and the trial court did not err in dismissing Winters' motion. (2) Because Winters' additional claims at issue on appeal did not pertain to Winters' check fraud conviction and lacked merit, the additional claims were procedurally barred. Therefore, the Court of Appeals affirmed the judgment of the Tallahatchie County Circuit Court.

**Affirmed - 2022-CP-00435-COA (Apr. 4, 2023)**

Opinion by Judge Greenlee

Hon. Smith Murphey (Tallahatchie County Circuit Court, First Judicial Dist.)

*Pro se* for Appellant - Scott Stuart (Att’y Gen. Office) for Appellee  
Briefed by [Naomi Migoya](#)  
Edited by [Thomas Simpson](#) & [Mason Scioneaux](#)

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## **COURT OF APPEALS - CRIMINAL CASES**

### **TUBWELL V. STATE**

#### **CRIMINAL - MISDEMEANOR**

**EVIDENCE - SUFFICIENCY OF EVIDENCE - CHALLENGE** - In reviewing a challenge to the sufficiency of the evidence, the question is whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt after viewing the evidence in the light most favorable to the prosecution; the conviction must be affirmed if there was sufficient evidence for any rational trier of fact to have rendered a guilty verdict

**MOTOR VEHICLE OPERATION - TRAFFIC CITATION - CHILD RESTRAINT** - Miss. Code Ann. § 63-7-301(1)(b) provides every person transporting a child in a passenger motor vehicle operated on a public roadway, street, or highway within this state, shall provide for the protection of the child by properly using a belt-positioning booster seat system meeting applicable federal motor vehicle safety standards if the child is at least four years old, but less than seven years old and measures less than four feet, nine inches in height or weighs less than sixty-five pounds

#### **FACTS**

Officer Ryan stopped a truck driven by Joe Tubwell on Southcrest Parkway after he passed the truck on an access road and observed a child seated on the driver’s lap. During the stop, Officer Ryan observed Tubwell, the child seated on Tubwell’s lap, one other adult, and two more children seated inside the single-cab truck. Officer Ryan stated all three children appeared young enough to require a car seat, but none of the children were properly restrained. As a result, Officer Ryan issued Tubwell a citation for violating the child-restraint statute. Following a trial, a municipal court in Southaven found Tubwell guilty of a child-restraint violation under Miss. Code Ann. § 63-7-301(1)(b). Tubwell appealed the municipal court’s judgment. After conducting a trial de novo, the DeSoto County County Court affirmed the municipal court’s judgment. Following Tubwell’s appeal from the county court’s judgment, the DeSoto County Circuit Court affirmed the judgment and sentence. Tubwell appealed.

#### **ISSUES**

Whether the circuit court erred by finding sufficient evidence to establish (1) Tubwell was driving on a public roadway street, or highway at the time of the traffic violation and (2) the child seated on Tubwell’s lap during the traffic stop was at least four years old but less than seven years old, measured less than four feet nine inches in height or weighed less than sixty-five pounds.

#### **HOLDING**

(1) Because Officer Ryan provided uncontradicted testimony that Tubwell committed the traffic violation and was stopped by Officer Ryan on Southcrest Parkway, and because Southcrest Parkway was a public roadway, street, or highway, the circuit court did not err by finding there was sufficient evidence for the trier of fact to find that the prosecution proved beyond a reasonable doubt that Tubwell was driving on a public roadway, street, or highway. (2) Because Officer Ryan provided uncontradicted testimony that the child on Tubwell’s lap appeared to be younger than seven years old, under four feet, nine inches in height, and less than sixty-five pounds based on his first-hand observation of the child and two other children, his personal experience as a father, and his two decades of professional experience as a law enforcement officer, and because Tubwell did not object to Officer Ryan’s testimony about the age of the child, the circuit court did not err by finding there was sufficient evidence to establish the child on Tubwell’s lap during the traffic stop met the statutory requirements under Miss. Code Ann. § 63-7-301(1)(b), and the child should have been in

a belt-positioning booster seat. Therefore, the Court of Appeals affirmed the judgment of the DeSoto County Circuit Court.

**Affirmed - 2022-KM-00342-COA (Apr. 4, 2023)**

Opinion by Judge Smith

Hon. Gerald W. Chatham Sr. (DeSoto County Circuit Court)

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

Briefed by [Jack Surber](#)

Edited by [Kennedy Gerard](#) & [Ashley House](#)

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## WILLIAMSON V. STATE

### CRIMINAL - FELONY

**CRIMINAL LAW - STOLEN FIREARM - TRAFFICKING** - Under Miss. Code Ann. § 97-37-35(3)(c), if the offender possesses two or more stolen firearms, the offense shall be considered trafficking in stolen firearms

**CRIMINAL LAW - EVIDENCE - ADMISSIBILITY** - The fact that the jury ultimately acquitted the defendant on some charges does not mean that it was error for the trial court to admit evidence related to those charges

**CRIMINAL PROCEDURE - WARRANTS - PROBABLE CAUSE** - The information necessary to establish probable cause must be information reasonably leading an officer to believe that, then and there, contraband or evidence material to a criminal investigation would be found

**CRIMINAL PROCEDURE - WARRANTS - VALIDITY** - A valid search warrant need not be positively specific and definite; it is sufficient if the places and things to be searched are designated in such manner that the officer making the search may locate them with reasonable certainty

### FACTS

A deer camp in Madison County was burglarized on two occasions, with guns, ammunition, a gun safe, ATVs, trail cameras, and other items being stolen. The trail cameras allowed the owner to provide the sheriff's department with photographs of the burglars, and the sheriff obtained a search warrant for the home where the contraband was stored. After searching the house, police arrested Latavius Leach, Kendravious Jobe, DeAngelo Carter, and LaKeith Smith, who named Genoris Williamson as an accomplice. Police obtained an arrest warrant for Williamson arrested him at his residence. The arresting officer noticed several items on the premises matching the stolen property descriptions and obtained a search warrant for Williamson's residence. During the search, officers recovered several stolen items, including a 9mm rifle. Officers found messages from Williamson's cell phone in which he stated he had stolen property from the camp. Williamson was indicted for burglary of a dwelling, grand larceny for the theft of 6 ATVs, grand larceny for the theft of two trailers, burglary of a shed, trafficking stolen firearms, felony malicious mischief, and conspiracy to commit burglary of a dwelling. Smith and Carter pleaded guilty to the charges surrounding the burglary. During their hearing, the trial judge acknowledged that they might testify at Williamson's trial and noted that any cooperation by them would be a mitigating factor in their sentencing. Their sentencing was deferred until after Williamson's trial. Before the trial, Williamson's original attorney passed and the new attorney, Ross Barnett Jr., filed a motion for a continuance to become familiar with the case. The judge continued the trial for a week past its original start date. During Williamson's trial, a storm caused a power outage. Rather than sending the jury home in the weather, the judge allowed Williamson to complete his testimony after both parties agreed to continue. Ultimately, Williamson was found guilty of burglary of a dwelling, burglary of a shed, and trafficking stolen firearms. Williamson appealed.

### ISSUES

Whether the trial court erred by (1) convicting Williamson of trafficking stolen firearms with the provided evidence; (2) admitting evidence of crimes in which Williamson did not participate; (3) denying Williamson's pretrial motion to suppress evidence seized during the search of his home; (4) denying Williamson's motion to recuse; (5) denying Williamson a longer continuance; and (6) not halting the trial during a power outage.

## **HOLDING**

(1) Because significant evidence was provided that Williamson was in the possession of a 9mm rifle and an assault rifle, and because significant evidence showed that Williamson aided and abetted in the possession of two or more stolen firearms, there was sufficient evidence presented for a rational juror to find Williamson guilty of trafficking stolen firearms. (2) Because Williamson was validly indicted and tried on charges related to the second burglary, and the State presented sufficient evidence at trial to submit all seven counts to the jury, the trial court did not abuse its discretion by admitting photos of guns recovered from Williamson's residence. (3) Because the magistrate had substantial basis for concluding that probable cause existed and because the warrant was sufficiently definite and specific designating items from the deer camp, the trial court did not err by denying Williamson's motion to suppress. (4) Because it was proper for the judge to consider the defendant's acceptance of responsibility and cooperation when sentencing the defendant, the trial court did not abuse its discretion by denying Williamson's motion to recuse. (5) Because Williamson failed to show that he was prejudiced in any concrete way by the denial of a longer continuance, the trial court did not abuse its discretion in limiting the continuance. (6) Because Williamson cited no precedent or rule of law holding that a trial judge must suspend a trial in comparable circumstances, the trial court did not commit plain error by allowing the trial to continue during a power outage. Therefore, the Court of Appeals affirmed the judgment of the Madison County Circuit Court.

### **Affirmed - 2021-KA-00830-COA (Apr. 4, 2023)**

Opinion by Presiding Judge Wilson

Hon. Dewey Key Arthur (Madison County Circuit Court)

James Howard Murphy for Appellant - Lauren Gabrielle Cantrell (Att'y Gen. Office) for Appellee

Briefed by [Baylee Howard](#)

Edited by [Kayla Tran](#) & [Mason Scioneaux](#)

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