

MISSISSIPPI SUPREME COURT DECISIONS – JUNE 1, 2023
SUPREME COURT - POST-CONVICTION RELIEF

GARCIA V. STATE

CIVIL - DEATH PENALTY - POST CONVICTION

CRIMINAL LAW - POST-CONVICTION RELIEF - RES JUDICATA - Procedural bars of waiver, different theories, and res judicata and exception thereto as defined in the postconviction relief statute are applicable in death penalty postconviction relief applications

CRIMINAL LAW - GUILTY PLEA - WAIVER OF PRIVILEGE - Guilty pleas operate to waive the defendant's privilege against self-incrimination, right to confront and cross-examine the prosecution's witnesses, right to a jury trial, and right that prosecution prove each element of the offense beyond reasonable doubt

CRIMINAL LAW - SENTENCING AND PUNISHMENT - COMPETENCY - The ultimate issue of whether a defendant is competent is not committed to experts but is a decision for the trial judge, who sits as the trier of fact and assesses the totality of the evidence as well as the credibility of the witnesses

CRIMINAL LAW - MENTAL HEALTH - INDEPENDENT EXPERT TESTIMONY - Defendant is not entitled to a favorable mental health evaluation, but is instead entitled to a competent psychiatrist and an appropriate examination

CRIMINAL LAW - COUNSEL - INVESTIGATION OF MITIGATING CIRCUMSTANCES - Trial counsel will not be deemed ineffective for failing to conduct an adequate investigation into mitigating circumstances for purposes of the sentencing phase of capital murder trial if there is proof of investigation or if there is no factual basis for the defendant's claims of mitigation

FACTS

Alberto Garcia pled guilty to the capital murder of a five-year-old after raping and murdering her. Garcia waived his right to appeal his conviction and his right to jury sentencing. The trial court judge, as the trier of fact, sentenced him to death. Garcia appealed his death sentence and the Supreme Court affirmed. Garcia then filed two separate petitions for post-conviction relief (PCR). Garcia filed one PCR petition with the Supreme Court to set aside his death sentence, which was denied by the Court. Garcia filed the other PCR petition with the circuit court to set aside his guilty plea. In this petition, Garcia contended his mental health issues, including suffering from autism, rendered him incompetent and unable to plead guilty voluntarily. He also argued that his trial counsel was ineffective for not ensuring his psychological expert was sufficiently independent and for encouraging him to plead guilty. Following a hearing, the trial court denied Garcia's PCR petition to set aside his guilty plea. Garcia appealed.

ISSUES

Whether (1) the circuit court erred in failing to address Garcia's expert testimony; (2) the circuit court erred in continuing to rely on Dr. Storer's expert opinion; (3) the circuit court erred in ruling Garcia was competent to plead guilty; (4) Garcia's trial counsel was constitutionally ineffective in not calling attention to Garcia's autism; (5) Garcia was deprived of a proper examination by a competent psychiatrist; and (6) the trial court was constitutionally ineffective in preparing Garcia to plead guilty.

HOLDING

(1) Because the trial court found the expert opinions on record more compelling than the new PCR experts whose opinions were contradicted by the record and because the trial court did address the question of whether Garcia's autism coerced him into his voluntary guilty plea and decided it did not match the trial judge's observations nor Garcia's own

attorney's testimony, the trial court did not err by failing to address Garcia's expert testimony. (2) Because Garcia failed to object to the submission of his expert's reports and qualifications during pretrial hearings, because his voluntary guilty plea acted as a waiver for all evidentiary issues and procedurally barred his contention that the expert evaluation failed the *Daubert* standard, and because the trial judge acted properly as the trier of fact regarding Garcia's competency, the trial court did not err in continuing to rely on Dr. Storer's expert opinion. (3) Because the court had reviewed Garcia's competency and because the record supported the trial court's competency ruling, the trial court did not err by denying Garcia's competency-based request to set aside his guilty plea. (4) Because Garcia's trial counsel was not required to question whether there were additional diagnoses besides those given by the psychological expert and because Garcia's attorney did advocate for him to be evaluated for potential incompetency, Garcia's trial counsel was not constitutionally ineffective for not calling attention to Garcia's autism. (5) Because the affidavit of Dr. Storer, Garcia's psychiatrist, supported the assertion that he was independent and strove to present an expert opinion to the trier of fact based on facts and because the record supported the conclusion that Garcia received a proper examination from a competent psychiatrist, the trial court did not err by denying Garcia's ineffective-assistance-of-counsel claim. (6) Because Garcia conceded that he was knowledgeable about everything in discovery before pleading guilty and because Garcia could not properly show that his counsel's performance was deficient and that the deficiency prejudiced him, the claim that his trial counsel was constitutionally ineffective because they failed to provide him with meaningful discovery was both waived and was without merit. Therefore, the Supreme Court affirmed the judgment of the Harrison County Circuit Court.

Affirmed - 2021-CA-01214-SCT (June 1, 2023)

En Banc Opinion by Justice Maxwell

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

Sue Ann Werre (Office of Capital Post-Conviction Counsel) for Appellant - Ashley Lauren Sulser, Brad Alan Smith, & Ladonna C.

Holland (Att'y Gen. Office) for Appellee

Briefed by [Arreyah Whitlock](#)

Edited by [Doug Reynolds](#) & [Mason Scioneaux](#)

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POWERS V. STATE

CIVIL - DEATH PENALTY - POST CONVICTION

CIVIL PROCEDURE - APPEALS - WAIVING CLAIMS - Claims can be waived in two ways: (1) claims that were capable of determination at trial or on direct appeal are waived and (2) the litigation of a factual issue at trial and on direct appeal of a specific state or federal legal theory or theories constitutes a waiver of all other state or federal legal theories which could have been raised under said factual issue; courts may grant relief from the waiver bars if cause and actual prejudice are shown

CRIMINAL PROCEDURE - COMPETENCY - STAYS - A stay is generally unmerited if the petitioner's exhausted claims are record based, however, a stay may be merited for claims that are both unexhausted and not procedurally defaulted; indefinite stays are improper; a hopelessly incompetent petitioner is not entitled to a stay even if the petitioner's assistance could substantially benefit the claim

CRIMINAL PROCEDURE - COMPETENCY - FORD HEARING - A *Ford* hearing is used to stay a petitioner's executions because of mental health deficits and other combined shortfalls which diminish his rational understanding of the punishment imposed on him; a *Ford*-based incompetency claim becomes ripe after the execution date is set; *Ford* bars executing inmates who are insane

POST-CONVICTION RELIEF - INEFFECTIVE ASSISTANCE OF COUNSEL - BURDEN OF PROOF - Under *Strickland*, a petitioner must satisfy a two-prong test: (1) that his counsel made errors so serious that he was not functioning as the counsel guaranteed under the Sixth Amendment; and (2) that counsel's errors were so serious as to deprive the petitioner of a fair trial; there must be a reasonable probability that, but for counsel's unprofessional errors, at least one juror would have struck a different balance

POST-CONVICTION RELIEF - RES JUDICATA - SUCCESSIVE WRIT BAR - Res judicata has been applied to claims that were considered and rejected in prior post-conviction proceedings; res judicata also concerns attendant to a successive motion for post-conviction relief are governed by the statutory successive-pleadings bar

CRIMINAL PROCEDURE - JURY SELECTION - VOIR DIRE - Voir dire is presumed sufficient to ensure a fair and impartial jury; to overcome this presumption, a party must present evidence indicating that the jury was not fair and impartial and show that prejudice resulted from the circuit court's handling of the voir dire; a juror is no per se disqualified because he is with or friends of counsel in the case

CRIMINAL PROCEDURE - JURY - DISCRIMINATION AGAINST JURORS - Defendants have the right to be tried by a jury whose members are selected by nondiscriminatory criteria; parties cannot strike a prospective juror solely on race; to determine if a jury was selected in a discriminatory manner, the court must analyze whether (1) the objector to the preemptory strike must make a prima facie showing that race was the criteria for the strike; (2) if the prima facie case is made, the burden shifts to the State to articulate race-neutral reasons for excluding that juror; and (3) the trial court must decide if the objector met the burden of proving purposeful discrimination

CRIMINAL PROCEDURE - DEATH PENALTY - REASONABLE INVESTIGATIONS - Counsel in a death penalty case has a duty to make reasonable investigation or to make a reasonable decision that makes particular investigations unnecessary; a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments

CRIMINAL PROCEDURE - PRESUMPTION OF PREJUDICE - CRONIC PREJUDICIAL CIRCUMSTANCES - Cronik identified three circumstances that are so likely to prejudice the accused that prejudiced is presumed: (1) when counsel is completely denied; (2) when counsel entirely fails to subject the prosecution's case to meaningful adversarial testing; and (3) when counsel is called upon to render assistance under circumstances where competent counsel very likely could not

CRIMINAL PROCEDURE - REVERSIBLE ERROR - CUMULATIVE ERROR DOCTRINE - The cumulative error doctrine holds that individual errors, which are not reversible in themselves, may combine with other errors to make up reversible error, where the cumulative effect of all errors deprives the defendant of a fundamentally fair trial; in considering a cumulative error claim, the court may look at whether the issue of innocence or guilt is close, the quantity and character of the error, and the gravity of the crime charged

FACTS

In 1998, Elizabeth Lafferty, Stephen Elliot Powers, and two other men cooked out and drank beer at Lafferty's home. Eventually, the other two men left, and Lafferty and Powers were alone. The next morning, Lafferty's body was found in the hallway with five gunshot wounds. Lafferty's body was nude from the waist down, and her injuries were consistent with defensive posturing. Authorities arrested Powers. Powers waived his *Miranda* rights and led police to the murder weapon. In a written statement, Powers admitted to killing Lafferty, but denied having sex with her.

During voir dire, Prosecutor Robert Helfrich disclosed that he and Juror Roger M. Bickford play golf together. Juror Bickford told the trial court that it would not pose a problem for him to be impartial. Later, Juror Faye C. Eppling volunteered that she knew Prosecutor Charles Gray Burdick because she had been one of his students. Although this was not fully confirmed to be accurate based on the record. Juror Eppling also told the trial court she could be impartial. Juror Kevin Cuevas told the trial court that he knew Lafferty and said she was just an acquaintance, but he did not provide whether the relationship would affect him at trial. Although, Juror Cuevas denied knowledge about alleged facts and affirmed he could be fair and impartial. Juror William Russell said he knew Lafferty's brother, Todd, well because he is a personal friend. He also provided he did not know anything about the case, and that he could be fair and impartial. Juror Murphy Bond provided that he knew two Hattiesburg Police Department ("HPD") Officers including Chief Charlie Sims and Detective Robbie Suber. During the time of Lafferty's murder, Juror Bond had worked with HPD, yet he claimed he did not know anything about the case. Jurors Cuevas and Russell also provided they knew Chief Sims as well. The trial court collectively asked about their relationship and if it would affect them. Nobody responded. Juror Cuevas disclosed that he had been the patient of Dr. Michael West, forensic pathologist, for twelve years but that it would not affect him at trial. The trial court then asked if there was anything any juror needed to disclose that had not been asked. None replied.

Prospective jurors received questionnaires regarding matters such as death penalty, hardship, and other excuses. The State asked three out of sixty potential jurors whether Lafferty's being white and Powers's being Black would influence

them. Each said no. The State used six preemptory strikes. Powers's counsel, Dan A. McIntosh III, used nine leaving three unused preemptory challenges. Powers failed to raise *Batson*. The trial court asked Powers if he was satisfied with the jury's composition and he replied yes. The jury was provided the capital oath. The forensic pathologist who conducted Lafferty's autopsy, Dr. Steven Hayne, testified that he did not see signs of rape. McIntosh then moved for a directed verdict based on insufficient evidence of attempted rape. The trial court denied directed verdict. McIntosh attempted to offer two witnesses. McIntosh called to the stand Dr. West who was the county coroner at the time of Lafferty's death. McIntosh sought to make Dr. West an expert in crime scene investigation and gunshots, but no crime scene reconstruction was done in Lafferty's case, so McIntosh made Dr. West a fact witness rather than an expert. Dr. West where he re-iterated that he was not able to testify how Lafferty's body had gotten in the position it was found in. McIntosh also called Jennifer Hale to the stand to testify that Lafferty told Hale that she thought the men wanted to have sex with her, but she did not seem scared. However, Hale was nowhere to be found, so McIntosh rested his case. McIntosh emphasized the lack of evidence for rape or attempted rape. The jury convicted Powers of capital murder with the underlying crime of attempted rape and sentenced him to death.

In 2003, Powers appealed his conviction to the Supreme Court ("*Powers P*"). In *Powers I*, Powers's petitioner counsel sought a stay and asked the Supreme Court to remand the case for an evidentiary hearing. The Supreme Court granted the motion. At the evidentiary hearing, McIntosh testified that he had only used *Batson* a few times in his thirty-six years of practicing law. McIntosh testified that he was not a *Batson* expert and that he did not go to Powers's jury trial fully prepared to raise it. Further, McIntosh testified that he had omitted a place for prospective jurors to indicate their race and that he could not find his notes regarding their race or gender. McIntosh testified that they only wound up with one African American on the jury because other African Americans were dismissed based on their feelings towards the death penalty. The Supreme Court affirmed the trial court's ruling, holding that Powers failed to show the requisite deficiency and prejudice or that McIntosh was ineffective in presenting a coherent defense.

In 2006, Powers petitioned for post-conviction relief ("PCR") which the Supreme Court denied ("*Powers II*"). In *Powers II*, Powers argued the trial court denied him the right to trial before an impartial jury. In support of his argument, Powers offered the only African American juror on the panel provided an affidavit that Juror Cuevas provided the jury with personal details about Lafferty, including that she would deliver packages to him and that she was nice and outgoing. Powers claimed this was improper nonrecord character evidence. The *Powers II* Court rejected Powers's request for an evidentiary hearing to determine the extent of the extraneous information and what effect it had on the jury's deliberations as barred since it was not raised on direct appeal. In *Powers II*, post-conviction counsel argued McIntosh was ineffective for failing to raise *Batson* because the State used its first two preemptory strikes on prospective jurors with a "B" beside their name, indicating a *Batson* issue assuming that indicated the race of the juror. The *Powers II* Court affirmed the trial court's decision, rejecting Powers's claim that McIntosh was ineffective for failing to obtain expert assistance.

Powers also petitioned the United States Supreme Court but was denied certiorari. After the Supreme Court denied PCR, Powers sought federal habeas relief in the United States District Court for the Southern District of Mississippi. The district court stayed federal habeas proceedings to give the State courts an opportunity to rule on unexhausted claims. The Supreme Court denied the abeyance motion alleging incompetency and the motion to amend without prejudice to Powers's right to seek a stay of execution at the proper time ("June 2022 order"). Powers filed an oral argument reconsideration motion, motion to rehear its June 2022 order denying his motion to hold PCR proceedings in abeyance because of petitioner's incompetency, and a motion for leave to file successive petition for PCR.

ISSUES

Whether (1) Powers was entitled to a motion for rehearing to determine his competency; (2) the trial court properly denied Powers's *Ford* claim; (3) Powers was entitled to an evidentiary hearing to determine the extent of the extraneous information provided by Juror Cuevas and what effect the information had on the jury during its deliberations; (4) the trial court's ruling that "Powers's impartial-jury claims were sufficiently meritorious to warrant consideration" required an evidentiary hearing; (5) Juror Cuevas's giving nonrecord character evidence violated Powers's right to a fair trial and PCR counsel was ineffective; (6) the trial judge failed to ensure that the empaneled jury could render an impartial verdict, or alternatively, whether trial and PCR counsel were ineffective in failing to raise the issue; (7) PCR counsel were ineffective in arguing trial counsel's *Batson* effectiveness; (8) trial counsel was ineffective during jury selection for not making *Batson* objections to the State's preemptory strikes; (9) PCR counsel were ineffective in arguing trial counsel's

Batson effectiveness; (10) the attempted-rape evidence was sufficient, as a matter of federal due process, to support Powers's capital-murder conviction; (11) trial counsel and PCR counsel were ineffective concerning the guilt phase; (12) Powers's trial counsel's "total dereliction" at sentencing required application of *Cronic* and not *Strickland*; (13) if *Cronic* was inapplicable, Powers's trial counsel was ineffective under *Strickland*; and (14) the cumulative error doctrine applied.

HOLDING

(1) Because the June 2022 order was governed by Miss. R. App. P. 27(h) since the order was a ruling on two motions rather than a merits opinion or decision, because Powers's proceeding if the order was governed by Miss. R. App. P. 40(a) would not be dispositive, because Powers failed to demonstrate good cause for suspending the rules and granting rehearing, because Powers represented that he could not be rehabilitated then was not entitled to stay federal habeas proceedings even if his assistance could have benefited his claim, and because Powers was not entitled to a right to competency, the motion for rehearing was denied. (2) Because Powers's mental state at the time of execution did not exist because Powers's execution was years away, and because Powers's execution date had not been set, Powers's *Ford* claim was not ripe and reconsideration of Powers's *Ford* claim assessing mental competency was denied. (3) Because Powers's objections to the extraneous information provided to the jurors should have been raised on direct appeal, Powers's claim was barred, bar notwithstanding, Powers could not claim surprise or prejudice to his defense because Juror Cuevas had informed counsel during voir dire that he was an acquaintance of Lafferty. (4) Because Powers failed to state a prima facie claim in his petition to the lower court in order to obtain an evidentiary hearing, and because the trial court's decision to grant any form of Powers's PCR was its decision, the trial court's "sufficiently meritorious" finding did not require an evidentiary hearing. (5) Because res judicata applied and successive-writ bar applied since the *Powers II* Court held that Juror Cuevas-related claim was barred and meritless, because Powers failed to show prejudice and that the result would have been practically conclusive that the result would have been different even if the *Powers II* Court had deemed Juror Duckworth's affidavit as newly discovered evidence and excepted the claim, Powers failed to show Juror Cuevas's nonrecord character evidence violated his right to a fair trial nor that his PCR counsel were ineffective. (6) Because all jurors took an oath to be fair and impartial, because the trial court was capable of determination of whether Powers's trial counsel was ineffective at trial or direct appeal if he had raised it, because whether Powers's PCR counsel was ineffective had not had the opportunity to be raised yet, because all jurors stated they would be fair and impartial, and because Powers failed to show the jury was actually nor implicitly biased against him, Powers's ineffective assistance counsel claim for trial counsel was barred and Powers's ineffective assistance of counsel claim for PCR counsel was unbarred, but meritless. (7) Because the *Powers I* Court found Powers had no viable *Batson* challenge, because Powers's PCR counsel argued that McIntosh was ineffective for failing to raise *Batson* in Powers's first PCR petition, and because the *Powers II* Court held that the *Batson* issue was barred and meritless, Powers failed to make a substantial showing that his PCR counsel was ineffective or prejudicial. (8) Because Powers had already raised the claim that McIntosh's performance as to *Batson* was constitutionally ineffective on direct appeal and on PCR, because Powers was required to show *Strickland* prejudice, because Powers failed to make a sufficient showing of that he was prejudiced by the outcome likely having been different, and because the newly-discovered-evidence exception was unmet, Powers's claim that trial counsel was ineffective during jury selection for not making *Batson* objections to the State's peremptory strikes was barred by res judicata and Powers failed articulate a claim sufficient to be allowed to proceed in trial court. (9) Because Powers failed to overcome the presumption of competence, and because Powers failed to demonstrate that the outcome of his trial or first PCR petition would have been any different had his *Batson* objections had been sustained, Powers failed to show that his PCR counsel were constitutionally ineffective. (10) Because the propriety of a circumstantial evidence instruction was decided at trial and in *Powers I*, because even if res judicata was inapplicable, Miss. Code Ann. § 99-39-21(2)'s waiver bar applied because Powers could have raised the federal due-process theory in *Powers I*, because no exception merited Powers relief from the procedural bars, because Powers presented no substantial showing that PCR counsel were ineffective, Powers's sufficiency of evidence and circumstantial evidence claims were barred by res judicata. (11) Because the *Powers I* Court rejected Powers's claim that McIntosh was ineffective in presenting a coherent defense and found McIntosh pursued a clear defense strategy, because the *Powers II* Court rejected Powers's claim that McIntosh was ineffective for failing to obtain expert assistance, because Powers's claim was insufficient to merit relief from any bar, because Powers failed to show how evidence he believed should have been admitted would have caused a different result, Powers's ineffective assistance of counsel claim was barred by res judicata and was insufficient to merit waiving that or any other bars that Powers did not present a substantial showing that PCR counsel were ineffective. (12) Because Powers's *Cronic* claim could have been raised when

McIntosh's effectiveness at sentencing was litigated on direct appeal and in prior PCR proceedings, because Powers did not present a substantial showing that PCR counsel were ineffective for failing to raise *Cronic*, and because the record indicated McIntosh did nothing separate to prepare for sentencing rather than completely failing to prepare as required for *Cronic* to apply, the issue of whether Powers's trial counsel's "total dereliction" at sentencing required application of *Cronic* was waived. (13) Because the *Powers I* and *Powers II* Courts rejected Powers's claim that McIntosh was ineffective as sentencing, because Powers's claim was insufficient to merit relief from any bar, and because Powers did not present a substantial showing that PCR counsel were ineffective, Powers's ineffective assistance of trial counsel claim was barred by res judicata, and because even if McIntosh and PCR counsel were deficient in failing to investigate mitigation evidence, no prejudice was shown. (14) Because Powers failed to prove there was cumulative error, cumulative error did not merit relief. Therefore, the Supreme Court denied Powers's oral argument reconsideration motion, motion to rehear its June 2022 order, and first successive petition for PCR.

DISSENT

Presiding Justice Kitchens argued Powers should be remanded for a competency hearing to determine whether Powers was mentally competent to confer rationally with his attorneys because a defendant must be competent at all stages of the criminal process including PCR proceedings. He also argued the Supreme Court should have granted an evidentiary hearing on whether Powers's PCR counsel was ineffective in arguing trial counsel's *Batson* effectiveness because Powers made a sufficient showing of merit to warrant an evidentiary hearing on whether race played an impermissible role in jury selection.

Post-Conviction Relief Denied - 2017-DR-00696-SCT (June 1, 2023)

En Banc Opinion by Justice Coleman - Dissent by Presiding Justice Kitchens

Hon. Richard W. McKenzie (Forrest County Circuit Court)

Krissy Casey Nobile, Mary Jo Woods, Sue Ann Werre, & Brandon Kyle Malone (Office of Capital Post-Conviction Counsel) for Petitioner - Ashley Lauren Sulser & LaDonna C. Holland (Att'y Gen. Office) for Respondent

Briefed by [Tyler White](#), [Anna Palmer](#), & [Mariah Rhodes](#)

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SUPREME COURT - CIVIL CASES

ALPHA MGMT. CORP. V. HARRIS

CIVIL - WRONGFUL DEATH

CIVIL PROCEDURE - JURISDICTION - VENUE - For venue purposes, the controlling question is where the corporation is actually doing business

CIVIL PROCEDURE - FRAUDULENT JOINDER - VENUE - In determining if a defendant was fraudulently joined for the purpose of venue, a court must consider: (1) whether the action was initiated in good faith on the bona fide belief that the plaintiff has a cause of action against the defendant upon whom venue is based; (2) whether the claim against the defendant upon whom venue is based is fraudulent, frivolous, or made with the intention of depriving the other defendants of their right to be sued in their own counties; and (3) whether the claim of liability asserted against the defendant upon whom venue is based is reasonable

CIVIL PROCEDURE - FRAUDULENT JOINDER - STANDARD OF REVIEW - When reviewing motions to transfer venue based on fraudulent joinder, the district court should pierce the pleadings and determine whether the non-removing party has any possible claim under applicable state law

PROPERTY - REAL PROPERTY - CONVEYANCE - The law requires a writing conveying real property to be signed by the grantor, not the grantee; acceptance by the grantee is essential for a sufficient conveyance of real property

CIVIL PROCEDURE - MOTION PRACTICE - DISMISSAL - Miss. R. Civ. P. 7(b)(1) provides that an application to the court for an order to dismiss shall be made by motion which, unless made during a hearing or trial,

shall be made in writing, shall state with particularity the grounds for dismissal, and shall set forth the relief or order sought; the motion should not be granted unless it appears beyond a reasonable doubt that the plaintiff will be unable to prove any set of facts in support of his claim

FACTS

John Harris died after a fire in an apartment complex, while Betty Harris and Kevin Gooden were injured. Betty Harris, individually and on behalf of John Harris's wrongful-death beneficiaries, and Gooden (collectively, "Harris") filed a complaint in Hinds County against Community Park Apartments, Inc. ("CPA"), and Alpha Management Corporation ("Alpha"). At the time the complaint was filed, the Secretary of State's website listed CPA as having its principal office in Hinds County. Alpha's principal place of business was in Madison County. Harris alleged that CPA and Alpha failed to fulfill their duties as owners, operators, and managers of the apartment complex to make the premise reasonably safe and secure and to take reasonable measures to protect tenants from foreseeable harm and danger from fire. Alpha responded to the complaint with a motion to dismiss, or alternatively, transfer venue due to fraudulent joinder. Alpha asserted that venue was improper because CPA was sued with the purpose of establishing venue in Hinds County. Alpha asserted venue was proper in Pike County, where the fire occurred, or Madison County, where Alpha's principal place of business was located, and not in Hinds County. The same day Alpha filed the motion to dismiss or transfer venue, Harris filed an application for entry of default against CPA for not responding to the complaint. The clerk entered a default judgment the next day. A month later, Harris moved for a default judgment against CPA, and Alpha responded, asserting the venue and jurisdictional issues needed to be resolved before the trial court addressed Harris's motion. Next, CPA filed an answer and motion to dismiss asserting that it had been a non-profit corporation that developed a low-income housing project called Community Park Apartments. CPA asserted that Community Park Apartments was sold to Community Park Associates, Ltd, and CPA no longer existed. The trial court held a hearing on CPA's motions to dismiss and Alpha's motion to dismiss or transfer venue. The day before the hearing, CPA filed a motion to set aside the entry of default, but the trial court did not hear arguments or rule on this motion. Instead, the trial court focused on whether CPA and/or Alpha should be dismissed, and whether venue should be transferred to Pike or Madison County. Alpha and CPA presented a certified copy of the 1975 warranty deed between CPA and Community Park Associates, Ltd. In response, Harris presented a print-out of Pike County's online tax rolls which showed "Community Park Inc. c/o Alpha Management Corp." owned the apartment complex. The trial judge expressed concern that only the representative of the CPA had signed the deed. CPA's counsel argued that CPA and Community Park Associates, Ltd. were separate legal entities, but the trial judge rejected the argument. The trial judge denied both CPA's motion to dismiss and Alpha's motion to transfer venue based on fraudulent joinder, determining that a fact issue existed with the assertion that CPA sold the property in 1975 because the warranty deed did not contain the signature of Community Park Associates, Ltd.; thus, Harris still had viable wrongful death claims against CPA. Alpha and CPA petitioned for interlocutory appeal.

ISSUES

Whether the trial court erred in (1) denying Alpha's motion to transfer venue based on fraudulent joinder; (2) ruling that CPA was a proper defendant; (3) ruling that Harris has viable claims against CPA; and (4) granting Harris's entry of default to keep CPA in the suit.

HOLDING

(1) Because CPA was fraudulently joined for the purpose of setting venue in Hinds County to deprive Alpha of being sued in its own county, because CPA sold Community Park Apartments, and because CPA was not a proper defendant against whom Harris had a reasonable claim for recovery as it did not own the apartments at the time of the fire, the trial court erred in denying Alpha's motion to transfer venue based on fraudulent joinder. (2) Because Mississippi does not require a grantee to sign a conveyance of real property, because the warranty deed was recorded nearly fifty years ago with no credible evidence to suggest that Community Park Associated, Ltd. did not accept title to the apartment complex, because the deed showed that CPA sold the apartment complex to a separate legal entity, and because CPA had not conducted any actual business since 1975 and did not own the apartments at the time of the fire, the trial court erred when it ruled that CPA was a proper defendant. (3) Because CPA was not the premises owner of Community Park Apartments, because CPA owed no duty to keep the premises reasonably safe, because Harris's complaint did not allege CPA negligently constructed and designed Community Park Apartments, because the complaint failed to put CPA on notice that it may have to defend negligence claims based on the design and construction of Community Park

Apartments, because CPA had not owned or controlled the apartments for decades, and because CPA was an improper defendant that could be used to establish venue in Hinds County, and the trial court erred when it ruled that Harris had viable alternative claims against CPA. (4) Because an entry of default may be set aside for good cause, because CPA moved to set aside the entry of default, asserting as good cause both the unexplained absences in counsel's office as a result of Covid-19 quarantines that led to an untimely answer and a meritorious defense that CPA did not own the apartment complex, because no default judgment had been entered in the case, because CPA's liability could not be deemed conclusive, because Harris's counsel sought entry of default upon learning that CPA had sold the apartments in order to keep the Hinds County defendant in the suit, which comports with fraudulent joinder, and because Harris lacked a good faith, bona fide belief that there was a cause of action against CPA, the trial court erred when it granted Harris's entry of default in the suit. Therefore, the Supreme Court reversed the judgment of the Hinds County Circuit Court and remanded the case with instructions to set aside the entry of default against CPA, dismiss CPA as a defendant, and transfer this case to either Pike County or Madison County.

CONCURRENCE IN PART & DISSENT IN PART

Justice Coleman argued that statutory law alone determines proper venue. The Legislature amended Miss. Code § 11-11-3 to remove the words that formed the basis of the Court's earlier pronouncement that when venue is good as to one defendant, it is good to all. Justice Coleman also agrees with Justice Griffis that the majority improperly considers the issue of setting aside the entry of default.

CONCURRENCE IN PART & DISSENT IN PART

Justice Griffis argued that the motion to set aside entry of default was not properly before the Court because the trial court had not yet ruled on the motion. Because neither party in their petitions for interlocutory appeal asserted that the entry of default was an issue on appeal, the Court improperly considered a question not raised on appeal nor in the trial court. Justice Griffis argued that CPA did not comport with Miss. R. Civ. P. 7(b)(1) because it did not state with particularity the grounds for the motion to dismiss or set forth the relief or order sought, nor did the motion state whether it was filed under Miss. R. Civ. P. 12(b)(6) or any other rule. Because the majority did not state the legal grounds or identify any procedural rule that supported CPA's dismissal, the Court improperly reversed the trial court's decision and improperly remanded with instructions to dismiss CPA as a defendant. Justice Griffis disagreed with the majority's reasoning to adopt the Fifth Circuit standard of review for fraudulent joinder and change the Court's standard of review in a venue decision from abuse of discretion to de novo because neither party filed a motion for summary judgment nor did the trial court consider such motion under Miss. R. Civ. P. 56(c).

Reversed & Remanded - 2022-IA-00354-SCT (June 1, 2023)

Opinion by Justice Maxwell - Concurrence in Part & Dissent in Part by Justice Coleman - Concurrence in Part & Dissent in Part by Justice Griffis

Hon. Adrienne Annett Hooper-Wooten (Hinds County Circuit Court)

Stephen Giles Peresich & Cowles Edgar Symmes for Appellant - Joe N. Tatum for Appellees

Consolidated with:

Reversed & Remanded - 2022-IA-00355-SCT (June 1, 2023)

Hon. Adrienne Annett Hooper-Wooten (Hinds County Circuit Court)

Stephen Giles Peresich, Cowles Edgar Symmes, Lanny R. Pace, & James Seth McCoy for Appellants - Joe N. Tatum for Appellees

Briefed by [Oliver Samples](#)

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

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**BD. OF SUPERVISORS FOR LOWNDES CNTY. V. LOWNDES CNTY. SCH. DIST. EX
REL. LOWNDES CNTY. SCH. BD.**

CIVIL - OTHER

CIVIL PROCEDURE - SUMMARY JUDGMENT - APPEALS - A party appealing a decision by a county board of supervisors is required to appeal said decision to the applicable circuit court and file a notice of appeal with that court within ten days of the board's decision

CIVIL PROCEDURE - SUMMARY JUDGMENT - REMEDY - Miss. Code Ann. § 11-51-75 is an aggrieved party's exclusive remedy to dispute a Board of Supervisors' decision

FACTS

The Board of Supervisors for Lowndes County ("Board") entered into a fee-in-lieu of ad valorem tax agreement ("FILOT") with Steel Corr and its subsequent successors in August 2008. The FILOT provided for annual payments in lieu of ad valorem taxes levied by Lowndes County on behalf of the Lowndes County School District ("District") and Lowndes County in the amount of one-third of the annual ad valorem tax levy for the Phase II Expansion Project ("Project"), including ad valorem taxes for the District purposes to be calculated as provided by the agreement. The first payment was to begin in February 2011, with the last payment in February 2020. In accordance with the FILOT, the Lowndes County Tax Assessor assessed the Project each year beginning in 2010 to determine the Project's total ad valorem tax levy in order to calculate the one-third fee in lieu owed for the Project for each Succeeding Assessment Year. In August 2020, pursuant to Miss. Code Ann. § 37-57-104[(1)], the District filed copies of the school district's budget with the Board and adopted a resolution requesting an ad valorem tax effort in the amount of \$27,421,842.00 for support of the school district in its fiscal year 2020-21. This request included an estimated \$3.5 million in ad valorem taxes on "new" property. Of that amount, an estimated \$3.47 million represented ad valorem taxes on properties previously subject to the expired FILOT. In September 2020, the Board granted the District's budget request but excluded \$3.35 million - an amount specifically calculated by the Board to represent ad valorem taxes on the properties previously subject to the expired FILOT. In excluding said amount, the Board stated in its official minutes it was based on a finding that the District's requested increased funding improperly included "new" property that does not meet the definition set out in the applicable laws of the State of Mississippi, and the District's definition of "new" property caused the exclusion of a referendum mandated by Mississippi law. Later that month, the District, not the Board, initiated and filed a declaratory action asking the trial court to decide whether the District or the Board was correct with regard to the interpretation of "new" property as set forth in Miss. Code Ann. § 37-57-107(1). The complaint alleged that the Board's decision to reject the \$3.35 million violated Miss. Code Ann. § 37-57-104(1) and was an improper interpretation of Miss. Code Ann. § 37-57-107(1). The District argued that the rejected portion of its tax effort should be excluded from the seven percent cap because it was the subject of a FILOT that expired in February 2020. The Board argued that it followed Mississippi law by rejecting the District's tax increase because it exceeded the seven percent cap provided by Miss. Code Ann. §§ 37-57-104 or 37-57-107. It further argued that the property subject to the expired FILOT was not previously exempt and had been assessed in the previous year by the Lowndes County Tax Assessor; therefore, the property did not meet the requirements of Section 37-57-107(1) and was not excluded from the seven percent cap. The District moved for summary judgment arguing that the Board wrongly interpreted the relevant statutes and asked the trial court to enter an order requiring the Board to remedy the \$3.35 million shortfall. The Board also moved for summary judgment, asking the trial court to find its statutory interpretation correct; it also argued the chancery court lacked jurisdiction because the District filed no bill of exceptions to appeal the Board's decision to the Lowndes County Circuit Court. The trial court ruled in favor of the District agreeing that a plain language reading of Miss. Code Ann. § 37-57-107(1) allowed for the treatment of an expired fee-in-lieu agreement as "previously exempt properties which were not assessed in the next preceding year." Additionally, the trial court found that this language applied to the Project properties subject to the FILOT and that the Project properties could be excluded from the seven percent cap increase on ad valorem tax receipts for 2021. Regarding jurisdiction, the trial court found that issue was waived because the Board admitted in its answer that the trial court had subject matter jurisdiction and failed to raise the jurisdiction defense in its original answer. The Board appealed.

ISSUE

Whether the trial court erred by determining that it had subject matter jurisdiction to hear this matter.

HOLDING

Because the District failed to file a notice of appeal of the Board's decision in circuit court, because the District failed to file a notice of appeal within the required ten-day deadline, and because Miss. Code Ann. § 11-51-75 was the District's

exclusive remedy, the trial court was without jurisdiction to hear this matter. Therefore, the Supreme Court reversed and remanded the judgment of the Lowndes County Chancery Court.

CONCURRENCE

Justice King argued that since the District asked the trial court for a declaratory judgment in its counterclaim, this could bring the entire lawsuit in the jurisdiction of the chancery court. A chancery court may proceed in one suit to complete adjudication when it has taken jurisdiction on any one ground of equity. However, the District cited no authority in support of this notion, so Justice King concurred in result only.

Reversed & Remanded - 2021-CA-00999-SCT (June 1, 2023)

Opinion by Chief Justice Randolph - Concurrence by Presiding Justice King

Hon. Rodney Purvis Faver (Lowndes County Chancery Court)

Andrew Scott Harris, Christopher Steven Pace, & Abbey Adcock Reeves for Appellants - John Simeon Hooks for Appellees

Briefed by [Spencer Cash](#)

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

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HEALY V. AT&T SERVICES, INC.

CIVIL - OTHER

REMEDIES - AWARD OF DAMAGES - LOST PROFITS - Sufficient evidence to establish lost profits to a reasonable certainty requires (1) a clear methodology that explains how the breach of contract caused the plaintiff to lose damages and (2) documentation that will establish and provide an underlying basis to support the award of lost profits

CIVIL PROCEDURE - FAILURE TO MAKE DISCLOSURES - SANCTIONS - If a party fails to admit the genuineness of any document or the truth of any matter, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, he may apply to the court for an order requiring the other party to pay him the reasonable expenses incurred in making that proof, including reasonable attorneys' fees.

BUSINESS ASSOCIATIONS - BUSINESS FORMATION - BUSINESS OWNER'S DISPOSITION - Per Miss. Code Ann. § 79-29-305, upon the creation of an LLC or PLLC, the company becomes a distinct legal entity, separate from the identity of the owner-members of the company

FACTS

George W. Healy IV & Associates, PLLC ("Healy PLLC") and its namesake, George Healy IV ("George"), switched the firm's phone numbers and 1-800 number to AT&T in 2016. An upgrade of services that included broadband and telephone services occurred approximately a year later in which all calls to Healy PLLC were directed to the firm's main line. Two years following the upgrade, Healy PLLC discovered the upgrade did not properly incorporate the 1-800 number. Instead, the 1-800 number was directed to a medical provider, and it was later revealed that the 1-800 number had been cancelled in July of 2018 without notice and unilaterally by AT&T. George and Healy PLLC filed a complaint for declaratory judgment, damages, and injunctive relief against AT&T. The complaint included a judgment amount request of \$20,000, which represented the amount paid to AT&T over the three years that the firm was to have the 1-800 number. Following litigation, a judgment was entered in favor of George and Healy PLLC, but for a much smaller figure than requested. The amount of the final judgment included the award of nominal damages of \$500 and the award of sanctions of \$1,622.50. George and Healy PLLC appealed.

ISSUES

Whether (1) the awarding of only nominal damages of \$500 for AT&T's breach of contract was appropriate; (2) it was error for the chancery court to not address any of the other requests for damages, such as inconvenience and annoyance caused by the deprivation of services, damage and harm to business reputation, or money spent on advertising the 1-800 number; and (3) the exclusion of attorneys' fees for Healy PLLC in the award of sanctions was appropriate.

HOLDING

(1) Because the chancery court justifiably ruled that it found no evidence that the breach of contract was the cause of Healy PLLC's loss of profits and because the chancery court justifiably found that Healy PLLC did not prove lost profits to a reasonable degree of certainty, the awarding of only nominal damages of \$500 was appropriate. (2) Because Healy PLLC's advertisements also included their main phone and facsimile number and because the advertising and marketing expert for Healy PLLC did not provide an explanation of how Healy PLLC was damaged, the amount of damage or any documentation to support the award of damages, it was not error for the chancery court to decline to address any of the other requests for damages. (3) Because George's legal work was performed in the capacity of an employee of Healy PLLC and not on his individual behalf, because the denial of attorneys' fees awarded as sanctions would create a precedent that could allow parties to purposely or negligently lie to the court and disrupt the discovery process when against a pro se litigant, and because the chancery court did not address the appropriate rate for George's fees, the exclusion of attorneys' fees for George in the award of sanctions was not appropriate. Therefore, the Supreme Court affirmed the chancery court's award of \$500 in nominal damages but reversed its decision to exclude George's attorneys' fees, remanding the matter to the chancery court for examination of the appropriate number of hours, work performed, and additional fees due to Healy PLLC based on George's time records.

Affirmed in Part; Reversed & Remanded in Part - 2021-CP-01411-SCT (June 1, 2023)

Opinion by Justice Griffis

Hon. Michael H. Ward (Harris County Chancery Court)

George W. Healy IV for Appellants - Jessica B. McNeel for Appellee

Briefed by [Mason Borneman](#)

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

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BARTON V. ADAMS-WILLIAMS

CIVIL - ELECTION CONTEST

ELECTION - DISPUTE - RESIDENCE REQUIREMENT - Miss. Code Ann. § 23-15-300(1) states any candidate for any municipal, county or county district office shall be a resident of the municipality, county, county district or other territory that he or she seeks to represent in such office for two years immediately preceding the day of election

RESIDENCE - INTENT - PRINCIPAL ESTABLISHMENT - A person's residence or domicile is where that person has his true, fixed, permanent home and principal establishment, and to which whenever he is absent, he has the intention of returning

DOMICILE - ESTABLISHMENT - REMOVAL - Once a domicile is established, it continues until another is acquired; before a domicile can be considered lost or changed, a new domicile must be acquired by removal to a new locality with intent to remain there, and the old domicile must be abandoned without intent to return thereto

FACTS

Ja'neka W. Barton, the incumbent county prosecutor, sought to disqualify Jennifer Adams-Williams as a candidate for county prosecutor in Bolivar County, for failing to meet the two-year residency requirement. Barton filed a challenge with the Bolivar County Democratic Executive Committee ("BCDEC") to determine whether Adams-Williams was a qualified elector in Bolivar County. BCDEC denied Barton's challenge. Barton sought judicial review from Bolivar County Circuit Court. The circuit court also denied Barton's petition and incorporated its findings of fact and conclusions of law to support its decision. The circuit court found un rebutted evidence about Adams-Williams's activities in Bolivar and Grenada Counties. Adams-Williams was born and raised in Grenada County, and she practiced law there since 2013. In October 2015, Adams-Williams married her husband, an undisputed resident of Bolivar County. The marriage certificate was issued in Bolivar County, and Adams-Williams and her daughter immediately moved into her husband's Bolivar County home. Adams-Williams and her husband have had three children of their own since their

marriage, and all of them were enrolled in school or daycare in Bolivar County and have been since they were old enough. Adams-Williams's daughter from her previous marriage was admitted as a student in Bolivar County public schools and had attended school there since her mother's marriage in 2015. Adams-Williams's and her daughter's vehicles were both registered in Bolivar County. In 2017, when renewing her driver's license, Adams-Williams changed her former Grenada address to her Bolivar address but did not elect to change her voting registration to Bolivar County then. Adams-Williams voted regularly in Grenada County from 2010 through November 2022. Prior to her marriage in October 2015, Adams-Williams was a candidate in the August 2015 primary for the Grenada County prosecuting attorney, an election she lost. Adams-Williams had served in multiple prosecutorial roles in various counties, but none of those appointed positions had a residency requirement. Adams-Williams testified that after the November 2022 general election, the Bolivar County prosecutor position became vacant. Adams-Williams then applied to the Bolivar County Board of Supervisors to be appointed to that position, but it denied the request and appointed Barton. Adams-Williams had been the Chairman of the Grenada County Democratic Party until present, serving in that role for the last several years. Adams-Williams maintained her notary public commission using the Grenada County address for several years. She changed her notary public commission address to Bolivar County four days after Barton formally contested Adams-Williams's candidacy based on residency. The trial court concluded that although Adams-Williams had many connections to neighboring Grenada County, including significant political and voting activity, none outweigh the overwhelming proof that Adams-Williams was and has been a resident, along with her family, for more than the two-year required residency period in the Bolivar County home in which she enjoyed homestead status and engaged in all activities of daily living. Barton appealed.

ISSUE

Whether Adams-Williams met the two-year residency requirement to qualify as a candidate for county prosecutor.

HOLDING

Because Adams-Williams lived with her husband in their marital home in Bolivar County since 2015, because she has raised her children in Bolivar County since her marriage, and because Adams-Williams's business and political activities in Grenada County were probative factors, not conclusive ones, the overwhelming evidence showed that Adams-Williams's residence for election qualification purposes was Bolivar County. Therefore, the Supreme Court affirmed the judgment of the Bolivar County Circuit Court.

Affirmed - 2023-EC-00586-SCT (June 1, 2023)

En Banc Opinion by Justice Beam

Hon. Jeff Weill Sr. (Bolivar County Circuit Court)

Senica Manuel Tubwell for Appellant - John R. Reeves for Appellee

Briefed by [Jack Surber](#)

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

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DOE V. ADAMS CNTY. DEP'T OF CHILD PROT. SERVS. EX REL. DAVENPORT

CIVIL - OTHER

CIVIL PROCEDURE - VENUE - YOUTH COURT - Under Miss. Code Ann. § 43-21-155(2), if the child is alleged to be an abused or neglected child, the proceedings shall be commenced in the county where the child's custodian resides or in the county where the child is present when the report is made to the intake unit

FAMILY LAW - CUSTODY - CUSTODIAN - Under Miss. Code. Ann. § 43-21-105(g), "custodian" means any person having the present care or custody of a child whether such person be a parent or otherwise

FAMILY LAW - DIVORCE - RESIDENCE - The Supreme Court has held that the word "residence" as used in divorce statutes is synonymous with "domicile"; the elements indicating one's domicile include: (1) an actual residence voluntarily established in said county, (2) with the bona fide intention of remaining there, if not permanently, at least

indefinitely; a broad interpretation of the word “residence” includes whether a person was sufficiently connected to said county to be considered a resident thereof

FAMILY LAW - TERMINATION OF PARENTAL RIGHTS - PRESIDING JUDGE - The chancery court has original exclusive jurisdiction over all termination of parental rights proceedings except when a county court sitting as a youth court has acquired jurisdiction of a child in an abuse or neglect proceeding, then the county court shall have original exclusive jurisdiction to hear a petition for termination of parental rights against a parent of that child

PROFESSIONAL RESPONSIBILITY - PRESIDING JUDGE - RECUSAL - Recusal is required only when a judge has personal knowledge of disputed evidentiary facts related to a case, not personal knowledge of all case-related facts

FACTS

In 2019, Jane Doe was arrested in Adams County and charged with possession and sale of a controlled substance. Doe was pregnant and homeless at the time of her arrest. As a condition of her bond with Adams County, Doe was placed at Born Free, a residential facility in Hinds County that provided substance abuse treatment to pregnant mothers. In July 2019, Doe gave birth to her daughter Karen at the University of Mississippi Medical Center in Hinds County. Doe listed Adams County as her county of residence on Karen’s birth certificate. Doe and Karen returned to Born Free after Karen’s birth. In August 2019, Doe was negatively discharged from the facility for various program violations and was transported back to Adams County. Karen was taken into custody by the Adams County Department of Child Protection Services (“CPS”) and placed into a foster home. Upon her return to Adams County, Doe rented an apartment in Adams County. In December 2019, the Adams County Youth Court adjudicated Karen as a neglected child. CPS developed a reunification plan with Doe. The plan required that Doe enter the Adams County family drug court program, find suitable employment, and maintain visitation with Karen. Doe failed to comply with the terms of the agreement and the youth court changed the permanency plan from reunification to adoption in December 2020. In October 2021, CPS filed a petition to terminate Doe’s parental rights. In November 2021, Doe filed a motion to transfer for insufficient jurisdiction or motion for recusal. Doe argued that the case should be transferred from Adams County to Hinds County because she had a physical presence with an intent to remain in Hinds County, and the youth court judge should recuse himself because he had been the presiding judge over Doe’s case and had already concluded that parental rights should be terminated. The youth court denied Doe’s motions and terminated Doe’s parental rights. Doe appealed.

ISSUES

Whether (1) venue was proper in Hinds County and (2) the youth court judge’s recusal was necessary.

HOLDING

(1) Because Doe was the natural mother and custodian of Karen and venue was proper where Doe resided, because Doe’s placement at Born Free did not amount to the voluntary establishment of an actual residence in Hinds County, because Doe listed Adams County as Doe’s county of residence on Karen’s birth certificate, because Doe had resided in Adams County since her discharge from Born Free, because Doe’s placement at Born Free was temporary and nothing in the record indicated Doe took any steps to permanently or indefinitely reside in Hinds County, because Doe was not sufficiently connected to Born Free in Hinds County to be considered a resident of it for purposes of venue, and because Karen was present in Adams County when the intake report was made, the youth court did not err in finding venue was proper in Adams County rather than Hinds County. (2) Because the youth court acquired jurisdiction of the neglect proceedings for Karen, the youth court had the authority to hear and rule on the petition to terminate Doe’s parental rights, because the youth court’s comments at the pretrial hearing were its recollection of the facts and circumstances regarding venue and pertained to the youth court’s knowledge of case-related facts rather than personal knowledge of disputed evidentiary facts related to the case, recusal of the youth court judge was not necessary. Therefore, the Supreme Court affirmed the judgment of the Adams County Youth Court.

Affirmed - 2022-CA-00240-SCT (June 1, 2023)

Opinion by Justice Griffis

Hon. Walter Jeffrey Brown (Adams County Youth Court)

Scott F. Slover for Appellant - Nathan H. McIntosh (Att’y Gen. Office) for Appellees

Briefed by [Madison McLean](#)

SHOWS V. GARNER

CIVIL - ELECTION CONTEST

ELECTION LAW - RESIDENCY - TWO-YEAR REQUIREMENT - A candidate for any municipal, county, or county district office shall be a resident of the municipality, county, county district, or other territory that he or she seeks to represent in such office for two years immediately preceding the day of election

ELECTION LAW - EXECUTIVE COMMITTEE - DETERMINATION OF QUALIFICATION - When a candidate seeks nomination in a political party election, it is the proper executive committee that shall then determine whether each candidate is a qualified elector of the state, state district, county, or county district which they seek to serve; this duty is nondelegable

ELECTION LAW - EXECUTIVE COMMITTEE - DISQUALIFICATION PROCEDURE - If the proper executive committee finds that a candidate is not qualified, then the executive committee shall notify the candidate and give the candidate an opportunity to be heard

ELECTION LAW - RESIDENCY - COURT DISCRETION - In cases in which reasonable minds might differ on the conclusion of whether a candidate is actually a resident of the district where he seeks to run, it is beyond the Supreme Court's power to disturb the findings of the circuit judge if supported by substantial evidence

ELECTION LAW - RESIDENCY - PREREQUISITES - For election purposes, residency and domicile are synonymous; the prerequisites of domicile are an actual residence voluntarily established in said county, with the bona fide intention of remaining there, if not permanently, at least indefinitely

ELECTION LAW - RESIDENCY - TWO RESIDENCES - Even where a party has two residences at different seasons of the year, that will be esteemed his domicile which he himself selects, or describes, or deems to be his home, or which appears to be the center of his affairs, or where he votes or exercises the rights and duties of a citizen

FACTS

In January 2023, Joel Garner filed with the Perry County Republican Executive Committee (“the Executive Committee”) his qualifying papers to run as a Republican candidate for Supervisor, District Two, in Perry County, Mississippi, in the August 2023 primary. The Executive Committee had a duty to determine whether candidates are qualified to serve. Cathy Ball, chairman and sole member of the Executive Committee, delegated this duty to the Perry County Election Commission (“the Commission”). Election Commission Chairman Sherry Hartfield and the rest of the Commission met with Garner without Ball present. Hartfield told Garner he did not meet the two-year residency requirement to qualify for the county district office. Hartfield conceded she made no investigation into Garner's assertion that he had lived in a trailer in District Two for the last two years. Instead, Hartfield based her decision on the knowledge that Garner's previous home was in District Four. The Commission informed Garner by letter that he was disqualified from running. Hartfield and Ball signed the letter on behalf of the Commission and the Executive Committee, respectively. Garner requested a hearing from the Executive Committee and was denied. Eight days later, Garner timely filed a petition for judicial review in Perry County Circuit Court. The circuit court heard Garner's petition over two days in which it listened to witness testimony and received documentary evidence. Garner testified and presented evidence that his residence before January 2021 was in District Two until May 2022 when it was redistricted to District Four. The evidence consisted of proof that he received personal mail at the trailer, photos demonstrating he lived there, proof that he canceled the homestead exemption on his previous residence and then filed a homestead exemption on the trailer at the earliest opportunity, his changing of voter registration to the trailer address, and proof that he had only voted in his new precinct since his move to the trailer. Additionally, Garner's wife, friends, neighbors, and coworkers testified that Garner had moved into his trailer in District Two in January 2021 and continued living there to the present day. In response, the Executive Committee presented a letter Garner had written in June 2022 challenging the order of redistricting which made it seem like Garner had only recently moved to District Two. Garner claimed the newspaper misquoted him, even though he paid for and approved the ad. The circuit court thoroughly

discussed the facts in a thirty-page findings of fact and conclusions of law. In it, the circuit court found that the Commission had no authority to determine Garner was not qualified to run in the Republican primary and the Executive Committee never properly disqualified Garner as a candidate. The circuit court also found Garner had been a resident of the trailer at Buck Creek Loop Road for at least two years before the election. The circuit court entered a final judgment incorporating its findings of fact and conclusions of law and granting Garner's petition. The circuit court ordered the election officials of Perry County to place Garner's name on the ballot. The Executive Committee and Kevin Shows appealed.

ISSUES

Whether the circuit court erred by finding that (1) the Commission lacked statutory authority to disqualify Garner and the Executive Committee failed to properly disqualify Garner and (2) Garner met the two-year residency requirement.

HOLDING

(1) Because it was the Executive Committee's nondelegable duty to determine a candidate's qualification, and because, even if Ball co-signing the letter could be construed as the Executive Committee's determination of disqualification, the statutory requirement to notify Garner and to give him an opportunity to be heard was not satisfied, the circuit court did not err by ruling that the Commission lacked statutory authority to disqualify Garner and the Executive Committee failed to properly disqualify Garner. (2) Because Garner's testimony that he changed his residency in January 2021 was corroborated by the testimony of his wife, friends, and neighbors, as well as Garner's cancellation of the homestead exemption on his previous home in District Four, and his voter registration information, substantial evidence supported the circuit court's finding that Garner changed his residency in January 2021, and the circuit court did not err by ruling that Garner met the two-year residency requirement. Therefore, the Supreme Court affirmed the judgment of the Perry County Circuit Court.

Affirmed - 2023-EC-00582-SCT (June 1, 2023)

En Banc Opinion by Justice Maxwell

Hon. Jeff Weill Sr. (Perry County Circuit Court)

L. Clark Hicks Jr. & R. Lane Dossett for Appellants - Malcolm F. Jones for Appellee

Briefed by [Katherine Hancock](#)

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

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SUPREME COURT - ORDERS

POWERS V. STATE

EN BANC ORDER

ORDER

Steven Elliot Powers filed a Notice of Intent to Supplement or Amend Post-Conviction Petition, a Motion to Stay, a Motion to Compel Disclosure of Documents and the Information and Inventory of Preserved Biological Evidence, and a Motion for Leave to File a Reply Brief, with an attached Reply in Support of Notice and Motion to Stay and Compel Disclosure. The Supreme Court denied Powers's request for a short stay of its decision. The Supreme Court granted Powers's motion to compel disclosure in part, finding Hattiesburg Police Department should provide Powers with the requested inventory if Powers made a written request to them that complied with Miss. Code Ann. § 99-49-1(3)(e). The Supreme Court noted that Powers's First Successor Petition for Post-Conviction Relief was pending before them, and Powers intended to supplement or amend the petition or to file another petition to assert *Brady* violations and prosecutorial-misconduct claims. Thus, the Supreme Court granted Powers's motion for leave to file a reply brief.

OBJECTION IN PART

Presiding Justice Kitchens agreed that Powers’s motion to compel the forensic inventory disclosure required under Miss. Code Ann. § 99-49-1(3)(e). He also agreed Powers should be granted leave to file a reply. However, he argued he would grant Powers’s motion to order the State to produce the complete files of all law enforcement and prosecutorial agencies involved because Powers demonstrated that he had not received all relevant documents that should have been made available to his post-conviction relief counsel as required under Miss. R. App. P. 22(c)(4)(ii).

Denied, Granted in Part, & Granted - 2017-DR-00696-SCT (June 1, 2023)

En Banc Order by Justice Coleman - Objection in Part by Presiding Justice Kitchens

Briefed by [Nivory Gordon](#)

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

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SUPREME COURT - CRIMINAL CASES

WELCH V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - INEFFECTIVE ASSISTANCE OF COUNSEL - BURDEN OF PROOF - A claim for ineffective assistance of counsel must meet a two-prong test: first, the defendant must demonstrate that his counsel’s performance was deficient and that the deficiency prejudiced the defense of the case; second, the standard is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different

CRIMINAL PROCEDURE - INEFFECTIVE ASSISTANCE OF COUNSEL - PRESUMPTION - In considering a claim of ineffective assistance of counsel, an appellate court must strongly presume that counsel’s conduct falls within a wide range of reasonable professional assistance, and the challenged act or omission might be considered sound trial strategy

FACTS

Martezzarrien Welch forced a fifteen-year-old girl to have sexual intercourse with him at the home where Welch’s father and great-uncle were working in the yard. The victim immediately texted her grandmother, who drove to the home and confronted Welch about the rape, which he denied having any knowledge of. The victim’s grandmother called the police and the police instructed her to take the victim to the hospital for a sexual assault examination. Tests revealed that seminal fluid from one individual was present on the swabs of the victim’s vaginal area, which was exactly the same as the DNA profile generated by Welch. Welch was indicted for statutory rape under Miss. Code Ann. 97-3-65(1)(a). At trial, Welch’s defense was that either his father or his great-uncle was responsible for the rape. His counsel pointed to the fact that both men were present at the home and because they were related, they shared DNA markers and the DNA could be theirs. Ultimately, the Copiah County Circuit Court jury found Welch guilty of statutory rape. Welch appealed.

ISSUE

Whether Welch received ineffective assistance of counsel.

HOLDING

Because Welch could not show that the outcome of his trial would have been different had his counsel obtained and tested his father’s and great uncle’s DNA, Welch’s counsel was not ineffective. Therefore, the Supreme Court affirmed the judgment of the Copiah County Circuit Court.

Affirmed - 2022-KA-00457-SCT (June 1, 2023)

Opinion by Chief Justice Randolph

Hon. Tomika Harris Irving (Copolah County Circuit Court)
James D. Shannon & Heather Lynn Hall for Appellant - Barbara Wakeland Byrd (Att’y Gen. Office) for Appellee
Briefed by [Hannah Elliott](#)
Edited by [Doug Reynolds](#) & [Mason Scioneaux](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – MAY 30, 2023

COURT OF APPEALS - CIVIL CASES

TRAN V. STATE

CIVIL - OTHER

CRIMINAL PROCEDURE - EXPUNGEMENT - JURISDICTION - Pursuant to Miss. Code Ann. § 99-19-71(2)(a), a person who has (1) been convicted of a crime and (2) paid all criminal fines and costs, may petition the court in which the conviction was had for an order to expunge

DUE PROCESS - CIVIL PROCEDURE - ENTERING JUDGMENT - Pursuant to Miss. R. Civ. P. 79(a), a judgment shall be effective only when it is recorded in the clerk’s docket, at which point, the judgment is final

FELONY CONVICTION - RECLASSIFICATION - RETROACTIVITY - An appellate court is precluded from considering any retroactivity argument regarding reclassification of a felony conviction when the appellant fails to provide any supporting legal authority

CRIMINAL PROCEDURE - EXPUNGEMENT - REQUIREMENTS - Pursuant to Miss. Code Ann. § 99-19-71(2)(a), a person who meets the statutory requirements for expungement may petition the court in which the conviction was had for an order to expunge one (1) conviction five (5) years after the successful completion of all terms and conditions of the sentence for conviction; Fines, fees, and court costs are conditions of a defendant’s sentencing

FACTS

In October 1994, Dung Thank Tran was arrested and charged for the possession of trace amounts of cocaine, and shortly thereafter, Dung was also charged for aggravated assault. Dung pled guilty to both charges in early 1995. Dung was sentenced to ten years in the custody of the Mississippi Department of Corrections (“MDOC”), with six years suspended and four years to serve, for the aggravated assault conviction. For the possession of cocaine conviction, Dung was sentenced to serve three years in the custody of MDOC, to run concurrently with the aggravated assault sentence. Additionally, the trial court ordered Dung to pay lab fees of \$125, all court costs, and assessments within six months of release from MDOC custody as a condition of the felony cocaine possession sentence. Dung was released from MDOC custody after serving his sentence but was indicted for selling crack cocaine shortly after release in March 1999. The State charged Dung as a habitual offender because of his prior convictions, and Dung was found guilty. Dung was sentenced to life imprisonment without eligibility for parole, probation, or early release, and Dung has been in MDOC custody ever since. In 2010, Dung filed a motion for post-conviction relief (“PCR”), collaterally attacking his 1995 conviction for possession of cocaine. The motion was dismissed by the trial court due to lack of jurisdiction, and the dismissal was later affirmed by the Court of Appeals, as he was no longer in prison for the 1995 conviction. In 2017, Dung filed another PCR motion, addressing his 1995 conviction of possession of cocaine, asserting that the conviction was void because his offense was only a misdemeanor. Dung cited amendments to the law that were passed more than sixteen years after he served his sentence for the conviction. The Court of Appeals affirmed the trial court’s dismissal of Dung’s 2017 PCR motion for lack of jurisdiction because Dung failed to get permission from the Supreme Court to file the motion. In August of 2019, Dung petitioned for expungement of the 1995 felony conviction for cocaine possession. The trial court concluded that Dung’s conviction was ineligible for expunction because he failed to pay all criminal fines and courts costs imposed as part of his sentence. In February 2021, Dung paid the criminal fines and court costs. In April 2021, Dung petitioned again for expungement of his 1995 felony conviction for cocaine possession. The trial court denied Dung’s petition because he failed to pay the \$150 filing fee. In August 2021, Dung paid the filing

fee, and refiled his petition for expungement in October 2021. The State responded to Dung's petition, arguing that five years had not passed since the completion of all terms and conditions of his sentence. The trial court denied Dung's petition for expungement. Dung appealed.

ISSUES

Whether the trial court erred by (1) not granting Dung's expungement; (2) filing the judgment thirty days after the judge signed the order in violation of Dung's due process rights; (3) not analyzing Dung's expunction eligibility under Miss. Code Ann. § 99-19-71(1), the misdemeanor conviction section, instead of § 99-19-71(2), the felony conviction section; and (4) not finding that Dung was entitled to expungement regardless of the classification of his offense due to his completion of the terms and condition of his sentence.

HOLDING

(1) Because Dung met the statutory requirements for filing a petition for expungement, the Court took no issue with Dung's assertions regarding jurisdiction and standing, and this was not the basis for the trial court's denial of Dung's expungement. (2) Because Dung was allotted the same thirty days to appeal as if the order had been entered the day the order was signed and because Dung failed to demonstrate how he was prejudiced by the fact that the judgment was not entered on the docket until 30 days after the judge signed the order, the trial court did not violate Dung's due process rights. (3) Because Dung failed to provide any legal authority for why the appellate court should apply misdemeanor privileges to his felony conviction retroactively, the appellate court was precluded from considering the issue on appeal. (4) Because Dung did not pay his fees and court costs until March 2021, Dung did not wait five years after the completion of his sentence; thus, he did not meet the qualifications for expungement. Therefore, the Court of Appeals affirmed the judgment of the Grenada County Circuit Court.

Affirmed - 2022-CP-00094-COA (May 30, 2023)

Opinion by Judge Westbrook

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

Pro se for Appellant - Allison Elizabeth Horne (Att'y Gen. Office) for Appellee

Briefed by [Merritt Baria](#)

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COURT OF APPEALS - CRIMINAL CASES

BEASLEY V. STATE

CRIMINAL - FELONY

EVIDENCE - APPEALS - SUFFICIENCY OF EVIDENCE - If a rational trier of fact could have found every element of the crime beyond a reasonable doubt when viewing the evidence in the light most favorable to the prosecution, the verdict must stand

CRIMINAL LAW - CAPITAL MURDER - ELEMENTS - To prove capital murder, it must be proved beyond a reasonable doubt that there was an unlawful killing while engaged in the commission of a crime specifically listed in Miss. Code Ann. § 97-3-19(2)(e)

CRIMINAL LAW - ROBBERY - ELEMENTS - The elements of robbery are that an individual (1) feloniously took (2) the personal property of another (3) in his presence or from his person and (4) against his will, (5) by violence to his person or by putting such person in fear of some immediate injury to his person

EVIDENCE - CIRCUMSTANTIAL EVIDENCE - WEIGHT & EFFECT - Circumstantial evidence is entitled to the same weight and effect as direct evidence

EVIDENCE - JURY QUESTIONS - CONFLICTING EVIDENCE - Evidentiary conflicts and credibility issues are questions for the jury, not grounds for a new trial

CRIMINAL LAW - WEATHERSBY RULE - APPLICABILITY - The *Weathersby* rule provides where the defendant or defendant's witnesses are the only eyewitnesses to the homicide, their version, if reasonable, must be accepted as true, unless substantially contradicted in material particulars by a credible witness or witnesses for the state, or by the physical facts or by the facts of common knowledge; when the record fails to prove that anyone saw the trauma that caused the victim's death, the *Weathersby* rule is inapplicable

FACTS

In October 2013, Barbara Taylor dropped off her sister, Ashley Taylor, at Eldra Gibson's home, where Sharrod Brown was visiting. Later that night, Barbara was going to pick up Ashley, but neither Ashley, Eldra, nor Sharrod answered the phone. The next morning, Barbara went to Eldra's home and found the gate open, the home unlocked and ransacked, and the deceased bodies of Ashley, Eldra, and Sharrod. Officers arrived at the home, and during the investigation, they discovered the only access to the home was the front door. A motion-activated surveillance camera posted outside the front door showed Javondus Beasley as the last person to enter and leave the home on the night of the crime. Shortly after, Beasley was arrested. A grand jury indicted Beasley for three counts of capital murder and one count of felon in possession of a firearm for the murder of Eldra, Ashley, and Sharrod. Beasley was found guilty of capital murder and two counts of second-degree murder in his first trial. On appeal, the Court of Appeals held the denial of Beasley's request for a circumstantial evidence jury instruction was reversible error and reversed and remanded for a new trial. At Beasley's second trial, there was testimony regarding the surveillance footage that showed Eldra letting Beasley into his home. There was testimony that the front door to Eldra's home was the only useable entrance due to foundation issues and bars on all of the home's windows. The surveillance footage showed Beasley letting himself out. Beasley left with a bulge under his coat and a plastic bag in his hand, despite the fact he had only arrived at Eldra's home with only his cell phone. Beasley was seen leaving the gate open as he left. The gate was always usually kept closed, and if it was left open, someone would come outside the home and close it. However, Barbara found the gate still open the next morning. Beasley's home was searched by investigators where they found the same type of ammunition that was used to commit all three murders in Beasley's air conditioning vent. Beasley testified that he was at the home the night of the murders, but that he did not kill anyone nor did he rob anyone. After the second trial, the jury found Beasley guilty of one count of capital murder and two counts of second-degree murder. Beasley appealed.

ISSUES

Whether (1) there was sufficient evidence to support Beasley's conviction of capital murder with robbery as the underlying felony and of second-degree murder; (2) the verdicts were contrary to the weight of the evidence; (3) Beasley was entitled to acquittal under the *Weathersby* rule; and (4) Beasley's trial counsel was ineffective for failing to ask for a *Weathersby* instruction.

HOLDING

(1) Because surveillance video showed Beasley present at the murder scene after he was let into the home by Eldra, because Beasley was the last person seen entering and exiting the home's only workable door on the surveillance video, because there appeared to be no forced entry, because there was no weapon at the scene that would suggest one person inside the home shot two victims and then committed suicide, because all three victims were murdered with the same type of ammunition found at Beasley's home, because the surveillance camera showed Beasley arriving with only a cellphone but leaving with more items, and because the home was ransacked, a rational juror could have determined beyond a reasonable doubt that Beasley murdered the victims while engaged in the commission of a robbery, and there was sufficient evidence to support Beasley's convictions of capital murder with robbery as the underlying felony and of second-degree murder. (2) Because Beasley's contention that other persons may have entered or left the home during the time of the murders was rebutted by testimony that the video surveillance was not altered, added to, or deleted, and because evidentiary conflicts and credibility issues were questions for the jury, there was ample evidence for which the jury could have determined guilt beyond a reasonable doubt, and the jury's verdicts were not contrary to the weight of the evidence. (3) Because Beasley testified that he did not witness the murders, because the record failed to prove that there were any eyewitnesses, and because Beasley failed to make the *Weathersby* argument as a ground for a directed verdict to the trial court, the *Weathersby* rule was inapplicable, and the argument was procedurally barred. (4) Because the *Weathersby* argument was inapplicable to Beasley and would not have entitled him to a directed verdict of acquittal,

Beasley's trial counsel was not ineffective for failing to ask for a *Weathersby* instruction. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Circuit Court.

Affirmed - 2021-KA-00948-COA (May 30, 2023)

Opinion by Judge Lawrence

Hon. Adrienne Annett Hooper-Wooten (Hinds County Circuit Court, First Judicial Dist.)

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