

**MISSISSIPPI SUPREME COURT DECISIONS – JANUARY 18, 2024*****SUPREME COURT - CIVIL CASES*****CLARKE CNTY. V. QUITMAN SCH. DIST.****CIVIL - OTHER**

**CONSTITUTIONAL LAW - STATUTORY INTERPRETATION - AMBIGUITY** - When a statute is not ambiguous, the court should apply the statute according to its plain meaning and should not use principles of statutory construction; when a statute is ambiguous or silent on a specific issue, statutory interpretation is appropriate

**TAX LAW - EDUCATIONAL FUNDING - PROMISSORY NOTE** - Under Miss. Code Ann. § 37-57-108, if the amount of revenue collected or estimated from local sources, on behalf of a school district during a fiscal year, is less than the amount provided for in the duly adopted budget of said school district for the fiscal year, then the school district may issue promissory notes in an amount and the manner outlined in Miss. Code Ann. § 27-39-33, not to exceed the estimated shortfall of revenue from a local source, but in no event to exceed twenty-five percent of its budget anticipated to be funded from the sources of the shortfall for the fiscal year

**FACTS**

BTH Quitman Hickory, LLC (“BTH”), a torrefaction and wood pellet company, objected to the Clark County Tax Assessor's valuation of its equipment in 2016, leading to a collection delinquency of \$320,537.66 that would be allocated to the Quitman School District (“the school district”). Following the appropriate statutory procedure, the Board of Supervisors adjusted ad valorem taxes to compensate, resulting in a surplus for the school district in the 2016-2017 school year. Similar adjustments were made in 2017 to ensure the school district's funding. In 2017, BTH filed for bankruptcy. In the 2018-2019 school year, the school district faced a shortfall of \$365,334. In 2018, Clarke County (“the county”) recovered \$1,522,982.18 through BTH's bankruptcy proceedings. The county, the City of Quitman (“the city”), and the school district would have received portions of these funds had the taxes been collected at the usual time or manner. The county held that the school district was not entitled to any recovered funds. The school district then demanded that the Clarke County Tax Collector (“the tax collector”) disburse a portion of the monies to the school district, which prompted the tax collector to file a complaint for interpleader in Clarke County Chancery Court, naming the county, the city, and the school district as parties. The chancery court granted an interpleader motion, awarding the city the undisputed amount of \$209,735.08, and dismissing the city and tax collector from the action. The county and school district then filed motions for summary judgment. Citing equity, the chancery court awarded the school district \$365,334 plus interest and the county was awarded all remaining funds. Clarke County appealed, and Quitman School District cross-appealed.

**ISSUE**

Whether the chancery court erred by awarding the school district a portion of the funds recovered by the county from bankruptcy proceedings of a delinquent taxpayer.

**HOLDING**

Because there were unambiguous statutory mechanisms designed to ensure the school district's yearly funding, because the school district elected not to issue promissory notes for the shortfall experienced, because the statutory scheme did not take into account the delivery of delinquent tax funds recovered years later, and because the taxes levied and received in the normal time and manner for the relevant school years had been calculated to cover the deficiency the county anticipated in collecting from BHT, the funds recovered through the BHT bankruptcy proceedings were excluded from

the school district's statutory funding scheme. Therefore, the Supreme Court reversed and remanded the judgment of the Clarke County Chancery Court.

**On Direct Appeal: Reversed & Remanded; On Cross-Appeal: Reversed & Remanded - 2022-CA-00471-SCT (Jan. 18, 2024)**

Opinion by Presiding Justice Kitchens

Hon. Charles E. Smith (Clarke County Chancery Court)

Richard Gerald Norris II & William C. Hammack for Appellant - Robert H. Compton & John G. Compton for Appellee

Briefed by [Maggie Crain](#)

Edited by [Nivory Gordon](#) & [Ashley House](#)

[Click here to view the full opinion](#)

---

## ***SUPREME COURT - ORDERS***

### **COCHRAN V. STATE**

#### **EN BANC ORDER**

#### **ORDER**

The Court of Appeals affirmed Michael Cochran's convictions and sentences in 2005. Cochran filed his sixth post-conviction application, a "Request for Post-Conviction Forensic, DNA, and Handwriting Testing," seeking access to evidence for DNA testing and handwriting analysis. However, Cochran's claim did not meet the biological exception to the time bar per Miss. Code Ann. § 99-39-5(2)(a)(ii). Further, the Court found that Cochran had no basis to seek a handwriting analysis substantiating his forgery claim because his forgery claims were waived pursuant to Miss. Code Ann. § 99-39-21(1). Further, the Court found that Cochran's application was frivolous and warned Cochran that any future frivolous filings may result in monetary sanctions or restrictions on future filings for post-conviction collateral relief in forma pauperis.

#### **OBJECTION IN PART**

Presiding Justice King agreed that Cochran's application for post-conviction relief should have been dismissed. However, he disagreed with the finding that the application was frivolous and with its warning that future filings deemed frivolous may result in monetary sanctions or restrictions on filing applications for post-conviction collateral relief. Because Cochran made reasonable arguments in his application for post-conviction relief, he argued that Cochran should not have been warned of future sanctions and restrictions and that such restrictions were tantamount to denying Cochran's constitutional right of access to the courts.

**Denied With Sanctions Warning - 2014-M-00090 (Jan. 9, 2024)**

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

Briefed by [Andrew "Blake" Huffman](#)

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

[Click here to view the full opinion](#)

### **FOX V. STATE**

#### **EN BANC ORDER**

#### **ORDER**

The Supreme Court suspended the Mississippi Rules of Appellate Procedure according to Miss. R. App. P. 2(c). The Supreme Court opted to review the orders denying Fox’s bail according to Miss. R. App. P. 27(h)(8), and will issue a ruling in due course.

## **OBJECTION**

Presiding Justice King objected to the order, recommending the Supreme Court review the matter pursuant to Miss. R. App. P. 16(e), which would allow the Supreme Court to recall a case assigned to the Court of Appeals on its own motion for any reason.

**Ordered - 2022-KA-00988 (Jan. 11, 2024)**

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

Briefed by [Zachary Perez](#)

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

[Click here to view the full opinion](#)

---

## ***SUPREME COURT - CRIMINAL CASES***

### **DAVIS V. STATE**

#### **CRIMINAL - FELONY**

**CRIMINAL PROCEDURE - SENTENCE ENHANCEMENT - FIREARM ENHANCEMENT** - Except to the extent that a greater minimum sentence is otherwise provided by any other provision of law, any person who uses or displays a firearm during the commission of any felony shall, in addition to the punishment provided for such felony, be sentenced to an additional term of imprisonment five years, which sentence shall not be reduced or suspended

**CRIMINAL PROCEDURE - JURY SELECTION - BATSON CHALLENGE** - If a peremptory challenge appears to be merely based on race, a *Batson* challenge will require a race-neutral reason for the peremptory challenge, provided that the objecting party demonstrates a prima facie showing that the exercise of the peremptory challenge was based only on race

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

**CRIMINAL PROCEDURE - NEW TRIAL - SUFFICIENCY OF EVIDENCE** - The Supreme Court reviews evidence in the light most favorable to the State to determine if any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt

**CRIMINAL PROCEDURE - MOTIONS - MOTION FOR SEVERANCE** - When determining whether to grant a severance the trial judge must consider (1) whether the testimony of one co-defendant tends to exculpate that defendant at the expense of the other, and (2) whether the balance of the evidence tends to go more to the guilt of one defendant than the other

**CRIMINAL PROCEDURE - NEW TRIAL - CUMULATIVE ERRORS** - The cumulative error doctrine holds that while harmless error in and of itself is not reversible, where more than one harmless error occurs at the trial level, those errors may have the cumulative effect of depriving a defendant of a fair trial

## **FACTS**

In November 2018, Tavonte White and Alicia Justice were murdered in a drive-by shooting. While being questioned about a separate incident, Kendarrius Davis confessed to being in the car with Jameco Davis (“Davis”) and Jacqlaurence Jackson when they murdered White and Justice. The lead investigator, Officer Clemons, believed Kendarrius’s confession because the details he gave about which side of White’s car was shot and what kinds of weapons were used

matched the crime scene, which the investigator believed could only be known by someone who was at the crime scene. As a result, Davis and Jackson were arrested. Clemons questioned Davis about incriminating statements he made in an Instagram video he was in with Kendarrius, but Davis gave no response. In October 2021, Kendarrius recanted his original statement, but he recanted his recantation in March 2022. During voir dire, Jackson's counsel made a *Batson* challenge when the State struck a juror. The State claimed that an investigator discovered evidence of criminal activity between a victim's family member and the juror's family member, and the trial court found that to be a race-neutral reason that passes the *Batson* challenge. At trial, Kendarrius testified that Davis and Jackson committed the murders. The jury found Davis and Jackson guilty of two counts of first-degree murder, and the trial judge added a firearm enhancement to both of their sentences. Both defendants filed motions for a new trial, and the trial court denied both motions. Davis and Jackson appealed.

## **ISSUES**

Whether (1) the trial court erred by adding a firearm enhancement to the sentences; (2) the trial court erred by failing to follow proper procedure for reviewing a *Batson* challenge; (3) the verdict was against the overwhelming weight of the evidence; (4) the evidence was insufficient to support Jackson's verdict; (5) the trial court erred by denying Jackson's motion to sever and have separate trials; and (6) the cumulative errors that occurred at trial denied Jackson his fundamental right to a fair trial.

## **HOLDING**

(1) Because a firearm enhancement under Miss. Code Ann. § 97-37-37(1) could not be applied if any other provision of law mandated a greater minimum sentence than the firearm enhancement's five years and because the mandatory minimum for first degree murder was life in prison, the Supreme Court vacated the firearm enhancement. (2) Because evidence of criminal activity between a victim's family member and a juror's family member was a race-neutral reason for striking a juror under *Batson*, because prosecutors could use information supplied by a third party as a race-neutral reason to strike potential jurors, because the defendants did not put forth enough evidence to prove that the race-neutral reason was pretextual, and because the trial court's failure to follow correct procedure did not prejudice the defendants, reversal was not required. (3) Because the evidence presented at trial supported the jury's verdict and because it was the jury's role to weigh the sufficiency of the evidence, the Supreme Court affirmed the verdict. (4) Because the State charged Jackson with first degree murder based on accomplice liability and because the evidence supported the idea that Jackson aided Davis in the commission of the murder, the Supreme Court affirmed the verdict. (5) Because the jury was instructed that Davis's statements in his Instagram video were not admissible against Jackson, because the two defendants had similar defenses, and because Kendarrius's testimony did not implicate Davis over Jackson, the issue was without merit. (6) Because the trial court only erred in the inclusion of the firearm enhancement, Jackson was not denied a fair trial. Therefore, the Supreme Court vacated in part and affirmed in part the judgment of the Adams County Circuit Court.

## **DISSENT**

Presiding Justice Kitchens agreed with Presiding Justice King's dissent and further argued that the trial court erred by not complying with Miss. R. Crim. P. 18.4(e). He pointed out that the trial court combined ruling on for-cause and peremptory challenges when those steps were supposed to be separate, the challenges were not made on the record, and the State did not present a full panel of jurors to the defense, all of which violate criminal procedure. Therefore, he would reverse and remand for a new trial.

## **DISSENT**

Presiding Justice King argued that the State failed to provide a race-neutral reason for striking a potential juror. He pointed out that the State could not specifically remember nor provide any records showing the reasoning for the strike, and even if the trial court proceeded to step three of the *Batson* analysis, the record contained no support for the State's reason for striking the juror. Therefore, he would reverse and remand for a new trial.

### **Vacated in Part; Affirmed in Part - 2022-KA-00696-SCT (Jan. 18, 2024)**

Opinion by Justice Chamberlin - Dissent by Presiding Justice Kitchens - Dissent by Presiding Justice King

Hon. Debra W. Blackwell (Adams County Circuit Court)

Mollie M. McMillin & George T. Holmes (Pub. Def. Office) for Appellants - Casey B. Farmer (Att'y Gen. Office) for Appellee

Consolidated with:

**Vacated in Part; Affirmed in Part - 2022-KA-00721-SCT (Jan. 18, 2024)**

Hon. Debra W. Blackwell (Adams County Circuit Court)

Katharine C. Curren for Appellant - Casey B. Farmer (Att’y Gen. Office) for Appellee

Briefed by [Taylor Coe](#)

Edited by [Emilee Crocker](#) & [Mason Scioneaux](#)

[Click here to view the full opinion](#)

## DOUGLAS V. STATE

### CRIMINAL - FELONY

**CRIMINAL PROCEDURE - INDICTMENT - ELEMENTS** - An indictment must contain: (1) the essential elements of the offense charged; (2) sufficient facts to fairly inform the defendant of the charge against which he must defend; and (3) sufficient facts to enable him to plead double jeopardy in the event of a future prosecution for the same offense

**CRIMINAL PROCEDURE - SENTENCING - HABITUAL OFFENDER** - Miss. Code Ann. § 99-19-83 provides that every person convicted of a felony who shall have been convicted twice previously of any felony . . . upon charges separately brought and arising out of separate incidents at different times and who shall have been sentenced to and served separate terms of one (1) year or more in any state and/or federal penal institution . . . and where any one (1) of such felonies shall have been a crime of violence shall be sentenced to life imprisonment, and such sentence shall not be reduced or suspended nor shall such person be eligible for parole or probation

**CRIMINAL PROCEDURE - HABITUAL OFFENDER - APPEALS** - When a criminal defendant fails to request a separate hearing at the time of sentencing as to whether he is a habitual offender, he is precluded from raising that point on appeal, even if there is substantive merit to the defendant’s argument

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

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

### FACTS

Confidential informant Ronald Keen made a controlled purchase of drugs from Willie Douglas. Keen was paid twenty dollars by law enforcement for each occasion. Recordings from Keen’s vehicle show Keen purchased a substance believed to be cocaine from Douglas for twenty dollars. Keen then met with officers at an agreed location and the officers put the substance in an evidence bag. The substances were analyzed by Erik Frazure at the Forensics Laboratory, who opined the substances were cocaine. Douglas was indicted and charged with two counts of the sale of less than two grams of cocaine. Douglas was further charged as a habitual offender under Miss. Code Ann. § 99-19-83. Keen recounted the events of the two purchases at trial. Douglas did not testify or present any evidence at trial. Both the Mississippi Department of Corrections’s (“MDOC”) and Tennessee Department of Corrections’s (“TDOC”) pen packs were admitted into evidence without objection from Douglas. Further, Douglas did not challenge the sufficiency of the evidence supporting his habitual offender status. The jury found Douglas guilty on both counts. Douglas filed a motion for judgment notwithstanding the verdict, or a new trial, which the trial court denied. Douglas appealed.

### ISSUES

Whether (1) Douglas’s indictment was defective because it did not include the length of time he was incarcerated for each prior conviction; (2) Douglas’s indictment was defective because it improperly used his middle name; (3) Douglas was denied the right to self-representation; (4) the trial court was biased and should have recused; (5) Keen and the two

law enforcement officers were credible; (6) Douglas’s right to be free from illegal searches and seizures was violated; (7) chain of custody was established; (8) the State failed to disclose evidence impeaching Keen’s credibility in violation of *Brady*; (9) the controlled substance at issue was tested because it was still in its whole form and not broken into pieces; (10) the State violated Douglas’s constitutional right to confront the witnesses against him; (11) the guilty verdict was against the overwhelming weight of the evidence; (12) Douglas’s trial was unconstitutionally closed to the public and held after the courthouse was closed; and (13) Douglas received ineffective assistance of counsel.

## **HOLDING**

(1) Because Douglas failed to object to the alleged defective indictment in the trial court, the issue was barred on appeal. (2) Because Douglas failed to object to the improper use of his middle name in the trial court, and because certified documents from his previous incarcerations showed his middle name, the issue was barred on appeal and was meritless. (3) Because Douglas did not ask to represent himself, the issue was meritless. (4) Because the trial court’s statements did not rise to the level of bias or prejudice, and because there was no motion for recusal before the trial court, the trial court’s failure to recuse was not an abuse of discretion. (5) Because the jury heard all evidence and testimony presented and then rendered its decision against Douglas, Douglas’s claim that Keen and the two law enforcement officers were not credible was meritless. (6) Because Douglas failed to argue in the trial court that his right to search and seizure was violated, and because no search warrant was required, the issue was barred on appeal and was meritless. (7) Because Frazure identified the evidence by its unique bar code and case number, and because Frazure testified that there were no signs of tampering, Douglas’s chain-of-custody claim was meritless. (8) Because Douglas was provided with the information regarding Keen’s drug history, and because Douglas used that information to cross-examine Keen at trial, Douglas’s *Brady* violation claim was meritless. (9) Because Frazure confirmed that both substances Keen purchased from Douglas were tested and that each substance was determined to be cocaine, and because Douglas neither objected to nor challenged Frazure’s findings, Douglas’s claim that the substance was not tested was meritless. (10) Because Douglas failed to argue in the trial court that the State violated his constitutional right to confront the witnesses against him, and because Douglas had the opportunity to confront the witnesses against him at trial, this issue was barred on appeal and was meritless. (11) Because surveillance videos, Keen’s trial testimony, and forensic drug analysis all supported the jury’s verdict that Douglas knowingly and intentionally sold cocaine to Keen, Douglas’s claim that the verdict was against the weight of the evidence was meritless. (12) Because nothing indicated the trial was closed to the public or held after the courthouse was closed, Douglas’s claim was meritless. (13) Because Douglas failed to show that his counsel’s performance was deficient and that the deficiency prejudiced his defense, Douglas’s ineffective-assistance-of-counsel claim was meritless. Therefore, the Supreme Court affirmed the judgment of the Panola County Circuit Court.

**Affirmed - 2022-KA-00859-SCT (Jan. 18, 2024)**

Opinion by Justice Griffis

Hon. James McClure III (Panola County Circuit Court)

*Pro se*, George T. Holmes, & Hunter Nolan Aikens (Pub. Def. Office) for Appellant - Lauren Gabrielle Cantrell (Att’y Gen. Office) for Appellee

Briefed by [Stephanie Iken](#)

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

[Click here to view the full opinion](#)

## **STEWART V. STATE**

### **CRIMINAL - FELONY**

**CRIMINAL PROCEDURE - PRETRIAL HEARING - VIRTUAL PRESENCE** - Depending on the nature of the hearing, virtual, rather than physical, presence at a pretrial hearing does not violate the defendant’s constitutional rights if the defendant still has the opportunity to cross-examine witnesses at trial

**CRIMINAL LAW - SEXUAL BATTERY - PENETRATION** - Only one means of sexual penetration must be proven for the defendant to be convicted of sexual battery



**CRIMINAL PROCEDURE - JURY INSTRUCTIONS - REVERSIBLE ERROR** - If the jury instructions, when read as a whole, fairly announce the law, then no reversible error will be found

**EVIDENCE - ADMISSIBILITY - COURT'S DISCRETION** - Relevancy and admissibility of evidence are largely within the discretion of the trial court and reversal may be had only where that discretion has been abused

### FACTS

Christopher Stewart was indicted on two counts of sexual battery after his niece admitted that Stewart (her uncle) had been raping her and her cousin, who were both under the age of fourteen. Both girls and Stewart tested positive for chlamydia. One girl stated that Stewart had penetrated her vagina, mouth, and anus, and the other said he had penetrated her vagina and anus; however, the indictment alleged that Stewart penetrated both girls vaginally, orally, and anally. Due to COVID-19, Stewart virtually attended a pretrial hearing determining if certain witnesses could testify under the tender-years hearsay exception. Stewart physically attended the trial and had the opportunity to cross-examine the same witnesses from the tender-years hearing. Certain questions were barred on cross-examination due to evidentiary concerns. Stewart was convicted on both counts. Stewart appealed.

### ISSUES

Whether the trial court erred by (1) conducting the pretrial tender-years hearing without Stewart's physical presence; (2) convicting Stewart of sexual battery; (3) insufficiently instructing the jury; and (4) limiting Stewart's cross-examination of the State's witnesses.

### HOLDING

(1) Because Stewart was physically present at trial and cross-examined the witnesses from the pretrial hearing, the trial court did not err by conducting the pretrial tender-years hearing without Stewart's physical presence. (2) Because the State only needed to prove one means of penetration, the trial court did not err in convicting Stewart of sexual battery. (3) Because the jury instructions, when read as a whole, fairly announced the law, the trial court did not err by insufficiently instructing the jury. (4) Because the trial court did not abuse its discretion, the trial court did not err by limiting Stewart's cross-examination of the State's witnesses. Therefore, the Supreme Court affirmed the judgment of the Hinds County Circuit Court.

### CONCURRENCE

Justice Kitchens argued that the State's indictment improperly used the word "and" to allege multiple methods of penetration, thus alleging multiple methods of penetration in the conjunctive instead of the disjunctive. He further stated that, although this ultimately amounted to an immaterial variance, better practice would have been to only include the methods of penetration that actually applied to Stewart in the indictment.

**Affirmed - 2022-KA-00107-SCT (Jan. 18, 2024)**

En Banc Opinion by Justice Maxwell - Concurrence by Justice Kitchens

Hon. Eleanor Johnson Peterson (Hinds County Circuit Court)

Mollie Marie McMillin & George T. Holmes (Pub. Def. Office) for Appellant - Danielle Love Burks (Att'y Gen. Office) for Appellee

Briefed by [Caroline Byrd](#)

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

[Click here to view the full opinion](#)

## **MISSISSIPPI COURT OF APPEALS DECISIONS – JANUARY 16, 2024**

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

**COE LAW FIRM, PLLC V. MISS. DEP'T OF EMP. SEC.**

**CIVIL - STATE BOARDS & AGENCIES**

**EMPLOYMENT LAW - UNEMPLOYMENT BENEFITS - INELIGIBILITY** - An individual shall be disqualified for benefits for: the week, or fraction thereof, which immediately follows the day on which he was discharged for misconduct connected with his work, if so found by the department, and for each week thereafter until he has earned remuneration for personal services performed for an employer, as in this chapter defined, equal to not less than eight times his weekly benefit amount, as determined in each case

**EMPLOYMENT LAW - MISCONDUCT - DEFINITION** - “[M]isconduct connected with work” is conduct evincing such willful and wanton disregard of the employer’s interest as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect from his employee; carelessness and negligence of such degree, or recurrence thereof, as to manifest culpability, wrongful intent, or evil design, and showing an intentional or substantial disregard of the employer’s interest or of the employee’s duties and obligations to his employer, come within the term

**EMPLOYMENT LAW - UNEMPLOYMENT BENEFITS - ADMINISTRATIVE PROCEEDING** - During the proceedings of an unemployment claim, an initial determination of benefits is made by a claims examiner, after which either party may appeal for a de novo telephonic conference with an Administrative Law Judge

**EMPLOYMENT LAW - UNEMPLOYMENT PROCEEDINGS - FAILURE TO APPEAR** - If all parties receive proper notice of a hearing, an Administrative Law Judge may render a decision even if a party fails to participate in the Administrative Law Judge hearing, although the defaulting party is given an opportunity to show good cause for failing to appear

**EMPLOYMENT LAW - UNEMPLOYMENT PROCEEDINGS - GOOD CAUSE FOR FAILURE TO APPEAR** - Good cause is established when there is sufficient evidence to show that a party failed to receive the mailing due to delays in the mail or because of an act beyond the party’s control; there is a presumption that the majority of mail is delivered on a timely basis; mere denial that the notice was received, without supporting evidence, fails to constitute good cause for failing to timely appeal

## **FACTS**

Angela Overstreet worked as a paralegal at the Coe Law Firm, PLLC (“the Firm”). In 2022, Thomas Bellinder, a lawyer who was not an employee of the Firm but had adequate authority, fired Overstreet. Overstreet then applied for unemployment benefits, stating in her application that the Firm gave no reason other than that it was moving in a different direction, that she did not receive warnings regarding any other reason for termination, and that she did not know of any rule violation in company policy that caused her termination. The claims examiner interviewed Bellinder and he provided specific reasons for Overstreet’s termination, stating that she acted unprofessionally, failed to complete assignments, did not properly take phone calls, and disregarded the Firm’s clean desk protocol. Bellinder also stated that the Firm had issued several warnings regarding Overstreet’s performance. Though Bellinder did not include specific dates in his interview, the Firm’s senior paralegal, Allison Christian, testified of three specific instances, including the dates that Overstreet had been warned of her deficient performance. In a second discussion with the claims examiner, Overstreet again denied the claims that the Firm warned her about performance deficiencies. Additionally, Overstreet stated the only meeting with Bellinder and Christian occurred during the meeting in which she was terminated. After reviewing the record, the claims examiner found that Overstreet was entitled to unemployment benefits because the Firm did not show that she was terminated for work-related misconduct. The Firm immediately filed for an appeal. The Mississippi Department of Employment Security (“MDES”) sent the Firm a pre-hearing notice that stated that any documents for the appeal should be submitted before the day of the hearing. A few days later, MDES sent the Firm and Overstreet a notice of hearing, notifying them of the time, date, and contact information for the hearing that would occur over the phone. The notice of hearing contained Bellinder’s phone number as the contact information on record for the Firm and stated that if the information was incorrect, then the Firm should submit the correct contact information. Otherwise, if MDES could not contact the Firm, it would lose the case. After receiving the notice, the Firm filed for a continuance which MDES granted. On the day of the re-hearing, the Administrative Law Judge (“ALJ”) could not reach the Firm over the phone. As a result, the ALJ dismissed the appeal due to the Firm’s absence. The Firm then appealed this decision to the Board of Review (“the Board”), stating that it had not received notice of the continued hearing date. Though not including any additional affidavits or evidence, the appeal included more specific instances of Overstreet’s subpar performance and attached only the ALJ’s decision notice and the notice of the original hearing. The Board affirmed the ALJ’s dismissal of the appeal after reviewing the record. The Firm appealed the Board’s decision to the Rankin County Circuit Court and again claimed that the Firm had not received notice of the date of the continued



hearing, listed Overstreet’s performance issues, but again failed to attach substantive evidence or affidavits to the appeal. MDES responded and attached the transcript of the hearing with the ALJ. The Circuit Court affirmed the Board’s decision. The Firm appealed.

### **ISSUES**

Whether the circuit court erred in (1) denying the Firm substantive or procedural due process by granting Overstreet benefits and (2) finding that Overstreet’s actions did not amount to misconduct.

### **HOLDING**

(1) Because the Firm did not provide any evidence to support its claim that it did not receive notice of the rehearing, because the Firm’s bare assertion of non-receipt was not sufficient to reverse the ALJ’s decision, and because Bellinder acted as the Firm’s attorney, the circuit court did not deny the Firm substantive or procedural due process by granting Overstreet benefits. (2) Because the Firm should have presented evidence that Overstreet’s performance issues amounted to misconduct at the ALJ hearing, and because the ALJ properly dismissed the case when the Firm did not attend the hearing, the circuit court did not err in finding that Overstreet’s actions did not amount to misconduct. Therefore, the Court of Appeals affirmed the judgment of the Rankin County Circuit Court.

**Affirmed - 2022-CC-01285-COA (Jan. 16, 2024)**

Opinion by Judge McDonald

Hon. Dewey Key Arthur (Rankin County Circuit Court)

Thomas Jon-William Bellinder for Appellant - Albert B. White for Appellees

Briefed by [Jay Palen](#)

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

[Click here to view the full opinion](#)

## **MTD PRODUCTS, INC. V. MOORE**

### **CIVIL - WORKERS’ COMPENSATION**

**WORKERS’ COMPENSATION - TYPES OF LOSS - DESCRIPTION** - Functional loss refers to the claimant’s medical disability, the claimant’s actual physical impairment, whereas industrial/occupational loss refers to the medical disability’s affect upon the claimant’s ability to perform the duties of employment

**WORKERS’ COMPENSATION - TYPES OF LOSS - AWARD OF BENEFITS** - If there is a disparity between the functional and industrial/occupational losses for a worker suffering a scheduled-member injury, the worker is entitled to compensation based on the greater of the two types of losses

**WORKERS’ COMPENSATION - ENHANCED OCCUPATIONAL IMPAIRMENT - FACTORS** - Factors that support a finding that a claimant’s occupational impairment was greater than their medical impairment include that the claimant was advanced in age, had limited education, continued to have pain in the injured member, and was medically restricted from performing a work-related task

### **FACTS**

In 2007, Brenda Moore began working at MTD Products, Inc. (“MTD”) as a temporary worker, and Moore stopped working at MTD after approximately two years. Subsequently, Moore studied at a community college and received an associate’s degree in general studies. In 2014, she resumed working part-time at MTD as a temporary worker. Eventually, she became a full-time robot operator for MTD. In March 2021, Moore fell onto the floor while attempting to remove cardboard boxes from her work station. As a result, Moore suffered a fracture to her left elbow. Shortly thereafter, Dr. William Pillow performed surgery on Moore’s left arm. In May 2021, Moore saw Pillow who permitted her to return to work subject to restrictions against pushing, pulling, and lifting objects heavier than ten pounds. That next day, Moore filed a petition to controvert alleging that she had a compensable injury. During the pendency of this claim, Moore saw Pillow who wrote that Moore complained of left elbow pain and numbness. In December 2021, Moore visited Pillow, who reported that she did not have any long-term restrictions and that she could return to full-time duty without any

restrictions. In January 2022, Pillow gave Moore an impairment rating of 14% in her upper extremity. The parties continued to dispute the "extent of Moore's permanent disability, and [the] industrial loss of use beyond [her] medical impairment rating. In July 2022, an Administrative Judge ("AJ") held a hearing on the matter, during which Moore provided testimony. Moore testified that she could no longer perform some work tasks at all and that she could not perform certain work tasks in the same manner as she had prior to the injury. In addition, Moore testified that she had continued to experience pain in her left arm after the surgery and difficulty in using her arm to complete daily tasks in her personal life. In October 2022, the AJ found that Moore suffered a 25% industrial loss of use to her left upper extremity and ordered MTD to pay to Moore permanent partial disability benefits in an amount calculated based upon her 25% industrial loss of use. MTD filed a petition with the Commission, seeking a review of the AJ's decision. MTD contended that the AJ's decision was not supported by substantial evidence and that the AJ made an error in determining that Moore experienced an industrial loss exceeding her medical impairment. In February 2023, the Commission affirmed the AJ's order without providing an opinion. MTD appealed.

### **ISSUE**

Whether the Administrative Judge's finding was arbitrary and capricious or not supported by substantial evidence.

### **HOLDING**

Because Moore was fifty-five years old at the time of her injury, because Moore had an education background consisting of an associate's degree in general studies, because Moore testified that she experienced pain in her left arm, because Dr. Pillow's medical reports verified Moore's complaints of pain and stiffness in her left upper arm, because Moore's testimony and medical documentation indicated that her injury significantly affected her job performance by causing her to make adjustments to her job duties and to be assigned to different tasks due to her impairment, the Administrative Judge's finding was supported by substantial evidence and thus, neither arbitrary nor capricious. Therefore, the Court of Appeals affirmed the decision of the Mississippi Workers' Compensation Commission.

#### **Affirmed - 2023-WC-00199-COA (Jan. 16, 2024)**

Opinion by Judge Westbrook

Mississippi Workers' Compensation Commission

Ginger Moore Robey for Appellant - Robert Earl Montgomery IV for Appellee

Briefed by [Joseph Muldrew](#)

Edited by [Nivory Gordon](#) & [Mason Scioneaux](#)

[Click here to view the full opinion](#)

## **RUTLAND V. REGIONS BANK**

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

**ESTATE PLANNING - IRREVOCABLE TRUSTS - TERMINATION** - An irrevocable trust may be terminated or modified under Miss. Code Ann. § 91-8-411 in one of several ways, some of which include the following: during the settlor's lifetime, a noncharitable irrevocable trust may be modified or terminated by the trustee upon the consent of all qualified beneficiaries; a court may modify or dissolve a trust if a partial number of beneficiaries seek the remedy

**CIVIL PROCEDURE - DISCOVERY - JUDGE'S DISCRETION** - The trial judge's sound discretion controls the matter of discovery

**EVIDENCE - COURT FILES - JUDICIAL NOTICE** - A trial court may take judicial notice of available evidence in its own court files

**APPELLATE PROCEDURE - PRINCIPAL BRIEF - STATEMENT OF ISSUES** - Issues that are raised for the first time in an appellant's reply brief are procedurally barred from review

### **FACTS**

William Rutland established an irrevocable trust in 1991 and named his first wife, Joanne, and his three children to be the beneficiaries; the only asset of the trust was William's life insurance policy. William and Joanne divorced in 2010,

and William married Bernice McWhorter three years later. Upon William's death in 2019, Bernice called the office of the trustee to request funds for estate expenses. The trustee declined as the request did not align with the trust's terms. The trustee then filed a petition for declaratory judgment seeking a judgment that the trust did not have to pay estate administration costs and a ruling that William and Joanne's divorce did not affect the trust. Bernice counterclaimed, arguing that the trust should pay William's funeral expenses. Bernice also claimed that the insurance policy should not have been placed in the trust because the trust was divided in William and Joanne's divorce settlement. The trial court granted summary judgment to the trustee, finding that the irrevocable trust was not dissolved, and its terms were to be strictly followed. Bernice sought reconsideration from the trial court, relying on exhibits from William's divorce to support her argument. The trial court denied Bernice's motion for reconsideration as it also recounted details from William and Joanne's divorce. Bernice appealed.

### **ISSUES**

Whether the trial court erred in (1) granting summary judgment to the trustee after doing its own fact-finding research to resolve material facts that remain in dispute and refusing to permit reasonable discovery and (2) finding all other issues were procedurally barred.

### **HOLDING**

(1) Because William and Joanne's children were beneficiaries who did not consent to the trust's modification or termination, because William and Joanne, assuming they intended to dissolve the trust following their divorce, did not place the issue before the trial court for its approval, because Bernice did not show how additional discovery would have impacted the trustee's request for summary judgment, and because the trial court reviewed documents which were referenced by Bernice and contained in the divorce docket filed within the trial court, summary judgment was proper, and the trial court did not err in denying further discovery or improperly make a factual determination regarding the trust. (2) Because Bernice raised three new issues in her reply brief, the issues were procedurally barred on appeal. Therefore, the Court of Appeals affirmed the judgment of the Coahoma County Chancery Court.

**Affirmed - 2022-CA-00720-COA (Jan. 16, 2024)**

Opinion by Judge McCarty

Hon. Watosa Marshall Sanders (Coahoma County Chancery Court)

J. F. Valley for Appellant - John Houston Dollarhide for Appellee

Briefed by [Sarah Schlager](#)

Edited by [Kara Edwards](#) & [Ashley House](#)

[Click here to view the full opinion](#)

---

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

### **BLACK V. STATE**

#### **CRIMINAL - FELONY**

**CRIMINAL PROCEDURE - JURY INSTRUCTIONS - LESSER-INCLUDED-OFFENSE** - In a capital murder case, a lesser-included-offense instruction is not warranted if the defendant has not provided a defense to the underlying crime of the capital murder

**CRIMINAL PROCEDURE - CLOSING ARGUMENTS - SCOPE** - Parties have broad discretion with statements made in closing arguments so long as they are within the scope of the facts introduced into evidence

**CRIMINAL PROCEDURE - JURY INSTRUCTIONS - CAUTIONARY INSTRUCTION** - A trial court will not be held in error for failing to issue a cautionary instruction where no such instruction is requested

### **FACTS**

In October 2021, Octavius Montego Black was arrested and indicted for capital murder based on the robbery and death of Betty Vaughans. During the trial, Detective Kimberly Snowden testified that she interviewed Black, where he confessed to “chok[ing]” Vaughans and taking her vehicle. On cross examination, Snowden denied lying to Black to obtain his confession but admitted that she misled him, hoping to obtain information from him. During Black’s closing argument, the trial court sustained the State’s objection to Black’s characterization that Snowden was a “liar.” Moreover, Black’s recorded confession was admitted into evidence. The jury was allowed to examine a written transcript of the recording while listening to it; however, jurors were prohibited from viewing the transcript during their deliberations. Black requested a lesser-included-offense instruction for manslaughter, but the trial court denied the instruction. Black was convicted and sentenced to life without the possibility of parole. Black moved for judgment notwithstanding the verdict or, in the alternative, a new trial, but the trial court denied the motion. Black appealed.

## **ISSUES**

Whether the trial court erred in (1) rejecting Black’s lesser-included-offense jury instruction for manslaughter; (2) improperly restricting Black’s closing argument; and (3) not issuing a cautionary jury instruction regarding the written transcript of the recorded confession.

## **HOLDING**

(1) Because Black offered no defense to the underlying charge of robbery, and because Vaughans was killed during the course of the robbery, meeting the elements for capital murder, the trial court did not err in denying Black’s requested lesser-included-offense jury instruction for manslaughter. (2) Because there was only proof in the record to show that Snowden misled Black to obtain information, and because Black’s argument that Snowden explicitly lied to Black to elicit information fell outside the scope of evidence, the trial court did not err by restricting Black’s closing argument. (3) Because Black did not request a cautionary jury instruction regarding the written transcript of the recorded confession, the trial court did not err by not providing the jury with a cautionary instruction. Therefore, the Court of Appeals affirmed the judgment of the Jackson County Circuit Court.

**Affirmed - 2022-KA-01101-COA (Jan. 16, 2024)**

Opinion by Judge McCarty

Hon. Robert P. Krebs (Jackson County Circuit Court)

George T. Holmes & Spencer Mark Ritchie (Pub. Def. Office) for Appellant - Barbara Wakeland Byrd (Att’y Gen. Office) for Appellee

Briefed by [Lydia Cates](#)

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

[Click here to view the full opinion](#)

## **GILMER V. STATE**

### **CRIMINAL - MISDEMEANOR**

**CIVIL PROCEDURE - DISMISSAL - FAILURE TO APPEAR** - An order entered by a court dismissing the appeal and remanding the case to the lower court for enforcement of the lower court’s judgment must affirmatively show that the defendant was called in open court and thereby given an opportunity to prosecute his appeal

**APPELLATE PROCEDURE - DISMISSAL - FAILURE TO APPEAR** - The appellate court will not disturb the discretionary action of the trial court in dismissing an appeal when it appears that the appellant’s failure to appear was due to willful neglect, where he acted in bad faith, or otherwise trifled with the court, or where the State was prejudiced

## **FACTS**

In December 2018, the Madison County Justice Court convicted Barry Gilmer and sentenced him to serve twelve days in the county jail for willfully discharging a gun and six months for disturbing the peace. Gilmer was an attorney and represented himself in the following proceedings. In January 2019, Gilmer filed a notice of appeal to the county court for a trial de novo. The county court scheduled the trial for February 27, 2020. Gilmer filed a motion to alter the

scheduling order and requested additional time to comply with discovery, and the City of Madison (“the City”) filed a response opposing Gilmer’s motion. The county court subsequently emailed Gilmer and the City to set a date and time for a motion hearing and pre-trial conference. On February 10, 2020, Gilmer emailed the county court and informed it that he was hospitalized with pneumonia. In order to accommodate Gilmer’s medical needs, the county court set the pre-trial conference for February 19, 2020. Two days before the pre-trial conference, Gilmer emailed the county court and the City and stated that he would be unable to attend the conference. On the day of trial, the City appeared and announced that it was ready to proceed. However, Gilmer failed to respond or appear. The county court called Gilmer’s name three times and attempted to ascertain if Gilmer was present. Approximately seventeen minutes after the trial was scheduled to begin, the county court received an email from Gilmer stating that he was in the hospital and would be unable to appear for the trial. Upon motion by the City, the county court entered an order dismissing Gilmer’s appeal and remanding the case to the justice court for enforcement of the justice court’s judgment. Gilmer appealed to circuit court, which affirmed the county court’s judgment. Gilmer appealed.

### **ISSUE**

Whether the circuit court erred by dismissing Gilmer’s appeal and remanding the case to the justice court to enforce its judgment against Gilmer.

### **HOLDING**

Because Gilmer was called in open court and thereby given an opportunity to prosecute his appeal, the circuit court did not err by dismissing Gilmer’s appeal and remanding the case to the justice court to enforce its judgment against Gilmer. Therefore, the Court of Appeals affirmed the judgment of the Madison County Circuit Court.

#### **Affirmed - 2022-KM-00257-COA (Jan. 16, 2024)**

Opinion by Presiding Judge Carlton

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

Cynthia Ann Stewart for Appellant - Pamela L. Hancock for Appellee

Briefed by [Reynolds Ward](#)

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

[Click here to view the full opinion](#)

## **JONES V. STATE**

### **CRIMINAL - FELONY**

**CRIMINAL LAW - ASSAULT - AGGRAVATED ASSAULT** - A person is guilty of aggravated assault if he or she attempts to use or purposely or knowingly causes bodily injury to another with a deadly weapon or other means likely to produce death or serious bodily harm

**CRIMINAL LAW - AGGRAVATED ASSAULT - ATTEMPT** - When a defendant is charged with attempted aggravated assault, the State must prove the defendant acted with an “unequivocal intent” because attempt crimes require a showing of specific intent

### **FACTS**

In February 2020, Demarion Jones, aged sixteen years at the time, was walking towards his apartment unit in Tunica when he saw De’Aryius Williams, a minor neighbor, walking toward him with his hands in his pockets. Jones then extended his arm in the air, holding a 9-millimeter gun, and he fired two shots. Williams ducked and ran back into his apartment. When Jones entered his apartment, his mother asked him what happened to which Jones responded that someone had been shooting at him. Jones’s mother called 911 because she was scared. Officer Arthur Kelly with the Tunica County Sheriff’s Department arrived on the scene, and Jones told Kelly that a masked, unidentified individual had shot at him from an automobile on Beatline Road. Kelly, Jones, and his mother drove to Beatline Road to search for shell casings, but they found no evidence. Later, Captain Berry Collins and investigators arrived at the apartment complex and viewed video footage at the complex of Jones shooting at Williams. A field observation was conducted



where they found marks on the ground where the bullets had struck. Jones was later arrested, and he was interviewed by an investigator after being advised of his rights and providing written consent. In March 2020, Jones was released from jail on bond. In August 2021, a grand jury indicted Jones for attempted aggravated assault of Williams with a firearm enhancement. In October 2022, a jury trial was held. During trial, Williams testified he knew Jones from school, but they were not friends nor had any problems; he also testified that Jones shot at him for no reason. The investigator revealed that Jones said he had not been provoked by Williams, but he shot at Williams because he believed that Williams had a weapon, which Williams did not. Jones testified that he and Williams did not get along and that Williams had said unfriendly things to him. Jones gave contradictory statements to the police and jury regarding the shooting at Beatline Road (which never happened), whether he saw or thought Williams had a weapon, and the alleged shooting. In October 2022, the jury found Jones guilty of attempted aggravated assault with a firearm enhancement. Jones filed a motion for a new trial which was denied. Jones appealed.

### ISSUE

Whether Jones’s conviction was against the weight of the evidence.

### HOLDING

Because Jones gave conflicting testimony about the actual event of the shooting and because Jones lied about the alleged drive-by shooting on Beatline Road, the court found that his guilty verdict was not against the overwhelming weight of the evidence. Therefore, the Court of Appeals affirmed the judgment of the Tunica County Circuit Court.

#### **Affirmed - 2022-KA-01199-COA (Jan. 16, 2024)**

Opinion by Judge Westbrook

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

Mollie Marie McMillin (Pub. Def. Office) for Appellant - Casey Bonner Farmer (Att’y Gen. Office) for Appellee

Briefed by [Mattie Hooker](#)

Edited by [Emilee Crocker](#) & [Mason Scioneaux](#)

[Click here to view the full opinion](#)

## **SIMMONS V. STATE**

### **CRIMINAL - FELONY**

**EVIDENCE - STOLEN PROPERTY - PRIMA FACIE CASE** - Under Miss. Code. Ann. §97-17-70(3), proof that a defendant stole the property that is the subject of a charge under this section shall be prima facie evidence that the defendant had knowledge that the property was stolen

**EVIDENCE - STOLEN PROPERTY - BURDEN** - The State carries the burden to prove beyond a reasonable doubt that a person (1) intentionally possessed, received, retained, or disposed of personal property, (2) stolen from someone else, (3) with knowledge or reasonable grounds to believe that it had been stolen

**CRIMINAL LAW- CIRCUMSTANTIAL EVIDENCE - REASONABLE DOUBT** - Direct evidence is unnecessary to support a conviction so long as sufficient circumstantial evidence exists to establish guilt beyond a reasonable doubt

### FACTS

Thomas Burns lived in Purvis with his wife until her passing in December 2017. In early 2018, he met Samantha Simmons, and they began dating and later moved in together. In March, neighbors grew concerned because they had not seen Burns in a while. Two of his friends, nicknamed Jaybird and Debo, testified that they would often visit Burns in his home. However, when Jaybird went to see him, Samantha lied and said he had relocated, then another time that he was attending school in Texas. Burns worked in construction in Texas and could be gone from two weeks to months at a time, but during this time, all five of his cars remained at his house. Debo tried to check on him several times after, but Samantha continuously told him that Burns was out of town. Debo tried to file a missing person’s report but could not because he was not related to Burns. A few months later, the neighbors reported a truck pulling a trailer with

furniture leaving Burns’s home. Debo called the police shortly after, and he and the deputy inspected the house. The house looked empty with the exception of two urns, and Debo testified that Burns had told him he wanted his ashes to be held in one of the urns. They also saw a freezer with a sheet on top of it. On May 22, 2018, Debo decided to contact Burns’s older brother, Kenneth. Together Debo, Jaybird, and Kenneth went to Burns’s house. The front door was open, a speaker was playing the radio, and nothing was in the house except cleaning supplies, one urn, and the freezer. It was later discovered that Simmons had moved all of the items into her new boyfriend’s house. Kenneth discovered the freezer had a padlock and used a crowbar to open it. In it, he discovered Burns’s body. Burns had been placed headfirst in the freezer with zip ties around his ankles, wrists, and neck. There was a trash bag over his head and a belt around his legs. The autopsy revealed he had either died from strangulation or environmental or positional asphyxia. Simmons’s DNA had been found on the zip ties, and she was charged with receiving stolen property and first-degree murder. The Lamar County Circuit Court jury ultimately found Simmons guilty on both charges. She was sentenced to serve a consecutive twenty-year sentence and a life sentence. Simmons appealed.

## **ISSUES**

Whether (1) the evidence was legally sufficient to sustain a conviction, and (2) the verdict was contrary to the weight of the evidence.

## **HOLDING**

(1) Because Simmons had intentionally possessed, retained, and disposed of Burn’s personal property, knowing she had stolen it, and circumstantial evidence established Simmons was guilty beyond a reasonable doubt for murdering Burns, the evidence was legally sufficient to sustain her conviction. (2) Because several eyewitnesses had testified they saw Simmons driving Burns’s car and taking things from his house and because Simmons chose not to testify in court and did not offer witnesses to rebut the evidence for murder, the verdict was not contrary to the weight of the evidence. Therefore, the Court of Appeals affirmed the judgment of the Lamar County Circuit Court.

### **Affirmed - 2022-KA-01260-COA (Jan. 16, 2024)**

Opinion by Judge Westbrook

Hon. Anthony Alan Mozingo (Lamar County Circuit Court)

George T. Holmes (Pub. Def. Office) for Appellant - Alexandra Lebron (Att’y Gen. Office) for Appellee

Briefed by [Emily Kaplan](#)

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

[Click here to view the full opinion](#)

## **VLASAK V. STATE**

### **CRIMINAL - FELONY**

**CRIMINAL PROCEDURE - GUILTY PLEA - DIRECT APPEAL** - A defendant is not entitled to file a direct appeal from a conviction or sentence entered following a guilty plea

**CRIMINAL PROCEDURE - SENTENCING - LACK OF JURISDICTION** - Once the circuit judge pronounces a sentence in a felony case, a sentencing order is entered on record, and the term of the court expires, the circuit judge is without jurisdiction to change or modify that sentence at a later time

## **FACTS**

Paul Vlasak was indicted by grand jury for burglary of a motor vehicle, three counts of fraudulently using another person’s identity and identifying information, and one count of identity theft. The State motioned to amend the indictment to charge Vlasak as a violent habitual offender, and the circuit court granted the motion. Vlasak pled guilty to the counts of fraudulently using another person’s identity as a nonviolent habitual offender, and in turn, the State nolle prosecuted the burglary and identity theft counts. After the plea hearing, the circuit court accepted Vlasak’s guilty pleas and sentenced him to three consecutive five-year terms as a nonviolent habitual offender. In response, Vlasak filed a “Motion to Modifie [sic] Sentence.” The circuit court held that the motion was filed after the term of the court had

ended; therefore, it had no authority to modify Vlasak’s sentence. Vlasak then filed a motion for reconsideration, which was denied by the circuit court. Vlasak appealed.

**ISSUES**

Whether the trial court erred in denying Vlasak’s motion for reconsideration.

**HOLDING**

Because Vlasak was not entitled to file a direct appeal from a conviction or sentence entered following a guilty plea and because Vlasak could not file a direct appeal from an order denying reconsideration of a sentence entered following a guilty plea, the Court of Appeals lacked jurisdiction. Therefore, the Court of Appeals dismissed the appeal from the Madison County Circuit Court.

**Appeal Dismissed - 2022-CP-01211-COA (Jan. 16, 2024)**

Opinion by Presiding Judge Wilson

Hon. Dewey Key Arthur (Madison County Circuit Court)

*Pro se* for Appellant - Ashley Lauren Sulser (Att’y Gen. Office) for Appellee

Briefed by [Selena Houston](#)

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

[Click here to view the full opinion](#)

**MISSISSIPPI CASES EDITORS**  
**ASHLEY HOUSE & MASON SCIONEAX**

**ASSOCIATE CASES EDITORS**  
**EMILEE “EMME” CROCKER**  
**KARA EDWARDS**  
**KENNEDY GERARD**  
**DOUG REYNOLDS**  
**THOMAS SIMPSON**  
**KAYLA TRAN**

*Thank you for supporting the Mississippi Law Journal.*

Questions or comments: Ashley House & Mason Scioneaux, [newsletter@mississippilawjournal.org](mailto:newsletter@mississippilawjournal.org)

*All BriefServ subscribers traditionally receive access to our website with archived case briefs since January 2007. Our BriefServ Archive is available to subscribers at <https://mississippilawjournal.org/briefserv/>. Currently, our digital database is still being updated with previous editions of the Newsletter. Requests for previous editions of the Newsletter not yet available in the BriefServ Archive can be made to Ashley House or Mason Scioneaux, [newsletter@mississippilawjournal.org](mailto:newsletter@mississippilawjournal.org). If you have questions about accessing or using the BriefServ website, please contact us at [support@mississippilawjournal.org](mailto:support@mississippilawjournal.org)*