
MISSISSIPPI SUPREME COURT DECISIONS – JULY 25, 2024***SUPREME COURT - ORDERS*****HUTTO V. STATE****EN BANC ORDER****ORDER**

This en banc Order by the Supreme Court denied the Motion for Leave to File Successive Petition for Post-Conviction Relief filed by James Cobb Hutto III in May 2023. Hutto initially filed a timely application for leave to file a motion for post-conviction relief that was denied for his conviction of capital murder. In this Order, the Supreme Court denied the four claims raised of constitutionally ineffective assistance by prior post-conviction counsel based on the application of the statutory bar in the Uniform Post-Conviction Collateral Relief Act (“UPCCRA”). The mandate in Hutto’s direct appeal issued in August 2017. Hutto’s May 2023 motion was barred by the one-year time bar pursuant to Miss. Code. Ann. § 99-39-5(2) and by the successive writ bar pursuant to Miss. Code. Ann. § 99-39-27(9). The Court held that Hutto’s claims of ineffective assistance of post-conviction counsel were statutorily barred, but notwithstanding bars, were without merit. Therefore, the Supreme Court denied Hutto’s Motion for Leave to File Successive Petition for Post-Conviction Relief.

CONCURRENCE

Presiding Justice Kitchens agreed with the Order but argued that he would deny because Hutto’s arguments were made without merit. He did not believe Hutto’s claims should be barred from consideration.

Denied - 2017-DR-01207-SCT (July 25, 2024)

En Banc Order by Justice Chamberlin - Concurrence by Presiding Justice Kitchens

Briefed by [Kelly Li](#)

Edited by [Sarah Schlager](#) & [William Davis](#)

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SUPREME COURT - CRIMINAL CASES**SHEELY V. STATE****CRIMINAL - FELONY**

CRIMINAL LAW - CONTROLLED SUBSTANCE - INTENT - In proving felony possession of a controlled substance, the prosecution need only demonstrate the defendant’s knowingness or intentionality as to the presence of the substance itself, not the knowingness or intentionality as to the actual quantity of that substance

CRIMINAL PROCEDURE - JURY INSTRUCTIONS - DISCRETIONARY REFUSAL - A defendant’s right to have jury instructions presenting his theory of the case is limited; the court is allowed to refuse an instruction that incorrectly states the law, is covered fairly elsewhere in the instructions, or is without foundation in the evidence

CRIMINAL PROCEDURE - CHAIN OF CUSTODY - PRESUMPTION OF REGULARITY - A presumption of regularity applies to the actions of public officers, and the defendant bears the burden of producing evidence that the chain of custody was broken through probable tampering with or substitution of the evidence

FACTS

Christopher Sheely was pulled over by a Forrest County police officer for driving with expired tags. During a subsequent pat down, the officer discovered a small plastic bag containing a white crystal substance in Sheely's pocket and placed him under arrest. Upon his arrest, Sheely told the officer that the substance was not a felony amount of meth but was less than a tenth of a gram and thus, not illegal. The recovered substance was tested and found to be 0.157 grams of methamphetamine. A total of six bags were taken into evidence: the smaller bags, one containing methamphetamine and one with marijuana, were placed into larger separate evidence bags. These two bags were placed into one even larger evidence bag, the fifth bag, and a crystalline rock that had fallen from Brandy Ledet's lap, a passenger in Sheely's car, was placed into a sixth. Accordingly, Sheely was indicted for possession of a controlled substance under Mississippi Code Section 41-29-139(c) for feloniously possessing more than one-tenth gram but less than two grams of methamphetamine. Sheely stood trial and proposed a jury instruction that contemplated whether there was any indication or reasonable inference of probable tampering with the evidence or substitution of the evidence. The trial court refused Sheely's proposed instruction, finding that an adequate chain of custody had been established and that Sheely failed to meet his burden in producing evidence otherwise. The jury found Sheely guilty, and he was sentenced to serve two years in the custody of the Mississippi Department of Corrections. Sheely appealed.

ISSUES

Whether (1) the evidence presented was sufficient to support the jury's verdict that Sheely intentionally possessed a felony amount of a controlled substance; and (2) the trial court erred by denying Sheely's proposed jury instruction.

HOLDING

(1) Because the jury was presented with evidence that Sheely was consciously aware that the bag taken from him contained methamphetamine and was in actual possession of the methamphetamine, the evidence was sufficient to support the jury's conviction of Sheely for felony possession of a controlled substance. (2) Because evidence was presented that the substances received by the crime lab were delivered separately as their own individual exhibits without any indication of damage to the integrity of the seal of their bag, the trial court did not err in ruling that Sheely did not overcome the presumption of regularity or in denying the proposed instruction. Therefore, the Supreme Court affirmed the judgment of the Forrest County Circuit Court.

Affirmed - 2023-KA-00493-SCT (July 25, 2024)

Opinion by Chief Justice Randolph

Hon. Jon Mark Weathers (Forrest County Circuit Court)

W. Daniel Hinchcliff & George T. Holmes (Pub. Def. Office) for Appellant - Barbara Byrd (Att'y Gen. Office) for Appellee

Briefed by [Madeline McMaster](#)

Edited by [Emily Kaplan](#) & [William Davis](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – JULY 23, 2024

COURT OF APPEALS - CIVIL CASES

CLARK V. ALFA INS. CORP.

CIVIL - INSURANCE

INSURANCE LAW - CONTRACT INTERPRETATION - POLICY LANGUAGE - The language and provisions of insurance policies are viewed as contracts and are subject to the same rules of interpretation as other

contracts; the analysis must begin with the policy's language, which either affords coverage or not, based upon the application of the policy language to the facts presented

INSURANCE LAW - CONTRACT INTERPRETATION - AMBIGUITY - Ambiguities exist when a policy can be logically interpreted in two or more ways; ambiguities do not exist simply because two parties disagree over the interpretation of a policy; an undefined term in an insurance policy warrants the term to be construed in favor of the insured

INSURANCE LAW - EVIDENCE - INCOME TAX RETURNS - Income tax returns are valid sources to determine whether a farming exclusion applies to an insured's activities

FACTS

Betty Haggard sustained injuries after crashing her vehicle into Robert Clark's cattle near his property. Haggard sued Clark and his insurance company, Alfa Insurance Corporation ("Alfa"), for damages incurred from the incident. Clark's homeowner's insurance policy included a farming exclusion that excluded coverage for "bodily injury or property damage arising out of business or farming engaged in by an insured." Alfa sent letters to Clark stating that this provision precluded Clark from defense and indemnification for Haggard's injuries from her collision with Clark's cattle. After discovery, Alfa moved for summary judgment and pointed to Clark's policy exclusion. Alfa supported its motion with Clark's 2018 federal and state income tax returns, where Clark listed under Profit or Loss From Farming ("Schedule F") his principal crop or activity as "timberland" and the cost of cattle and also reported no income for livestock sales. The trial court also considered an affidavit authenticating Clark's tax returns that also responded to Alfa's interrogatories and later interrogatory responses stating he had no specific plans with the cattle. Clark argued that his cattle ownership was a hobby instead of an agricultural enterprise. Clark and Haggard opposed Alfa's motion for summary judgment and argued that the farming exclusion's term, "enterprise," was too ambiguous to support the argument that no genuine issue of material fact existed. The circuit court granted Alfa's motion for summary judgment and found no genuine issue of material fact as to the provision's application to Clark, thus confirming that Alfa had no contractual obligation to defend and indemnify Clark from Haggard's damages. Clark and Haggard appealed.

ISSUES

Whether the trial court erred in finding (1) that the policy's farming exclusion applied and (2) sufficient evidence existed to determine that Clark's cattle constituted an agricultural enterprise.

HOLDING

(1) Because the term "enterprise" was interpreted broadly to include systematic, purposeful activities and not just formal business endeavors, and because the farming exclusion applied to all agricultural enterprises, regardless of their profit motive, the trial court did not err in determining that the insurance policy's farming exclusion applied to Clark. (2) Because an "agricultural enterprise" did not necessarily require income from the cattle, and because the Schedule F, the authenticating affidavit, and Clark's interrogatory responses were sufficient evidence to consider his cows as an agricultural enterprise, the trial court did not err in finding no genuine issue of material fact that the cattle precluded Clark from insurance coverage under his homeowner's policy. Therefore, the Court of Appeals affirmed the judgment of the Winston County Circuit Court.

Affirmed - 2022-CA-01251-COA (July 23, 2024)

Opinion by Chief Judge Barnes

Hon. Henry Ross (Winston County Circuit Court)

C. Maison Heidelberg, C. Hugh Hathorn, & Ginny Y. Deliman for Appellants - Walker R. Gibson & Rebecca S. Blunden for Appellee

Briefed by [Drayton Purvis](#)

Edited by [Katie Shaw](#) & [William Davis](#)

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CIVIL - WILLS, TRUSTS, & ESTATES

CIVIL PROCEDURE - APPEALS - WAIVER - A movant's failure to appeal a ruling from a prior order waives the right to challenge it and receive relief

CIVIL PROCEDURE - STATUTE OF LIMITATIONS - FRAUDULENT MISREPRESENTATION - Pursuant to Miss. Code Ann. § 15-1-49, claims alleging fraudulent misrepresentation are subject to a three-year statute of limitations

APPELLATE PROCEDURE - COURT'S DISCRETION - ENJOINER FROM FILING SUIT - The court has broad authority to deter vexatious, abusive, and harassing litigation by enjoining such movants from further filing

CIVIL PROCEDURE - APPEALS - WAIVER - Issues not raised or addressed in the trial court are waived on appeal

FACTS

In 2013, Ursula Staten, as administratrix of her ex-husband's estate, filed a wrongful death suit against Harrison County and the City of D'Iberville. Ray Staten died in the custody of the Harrison County Sheriff's Department from a perforated ulcer, and Staten filed the wrongful death action in federal court. The estate closed when Staten and the estate's wrongful death beneficiaries accepted a settlement of \$350,000 in 2015. From August 2016 to January 2018, Staten filed four separate pro se suits in federal court against the former defendants' counsel in an attempt to reopen her ex-husband's estate, alleging, among other things, fraudulent misrepresentation and legal malpractice. In June of 2018, the chancery court set aside its previous ruling to reopen the estate based on the two-year statute of limitations from the closing of the estate. The federal district court dismissed all four lawsuits, finding that Staten failed to properly state her claims, that she was an improper pro se litigant, and that she lacked standing. After Staten reissued her petition to reopen the estate two more times, the district court dismissed her suit and enjoined her from further filings on the issue. The Fifth Circuit affirmed. In December 2022, Staten filed motions with the chancery court seeking to set aside the court's June 2018 order, reopen the estate, and recuse the chancery court judge. She also filed a motion for a continuance. The court denied all of Staten's motions as res judicata in early 2023. In February 2023, Staten filed a challenge to the court's order. The Supreme Court denied her motion and her petition to recuse the chancery court judge. Staten appealed.

ISSUES

Whether the trial court (1) erred in denying Staten's 2022 motion to set aside its June 2018 order; (2) abused its discretion in enjoining Staten from subsequent filings relating to the same matter; (3) erred in denying her motion for recusal and a continuance; and (4) should have allowed her to appeal the June 2018 order.

HOLDING

(1) Because Staten's 2022 motion to set aside the June 2018 order was simply an attempt to relitigate the claims considered in the June 2018 order, Staten waived her right to challenge the trial court's 2023 rulings denying her 2022 motion. (2) Because Staten filed suits to reopen a long-settled wrongful death case outside the applicable statute of limitations, the trial court did not abuse its discretion in enjoining Staten from subsequent filings. (3) Because Staten failed to make any substantive arguments regarding judicial recusal, and because the Supreme Court denied her petition for review, she waived those claims. (4) Because Staten did not timely appeal the June 2018 judgment, the court lacked jurisdiction to address those arguments on appeal. Therefore, the Court of Appeals affirmed the judgment of the Harrison County Chancery Court.

Affirmed - 2023-CP-00228-COA (July 23, 2024)

En Banc Opinion by Chief Judge Barnes

Hon. James B. Persons (Harrison County Chancery Court, Second Judicial Dist.)

Pro se for Appellant - Joe Sam Owen, William E. Whitfield III, Tim C. Holleman, Mark C. Carlson, & James E. Welch Jr. for Appellees

Briefed by [Alexis Cobbs](#)

Edited by [Robert "Duncan" Jones](#) & [William Davis](#)

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WARREN V. MAHARREY

CIVIL - WILLS, TRUSTS, & ESTATES

WILLS & ESTATES - CONFIDENTIAL RELATIONSHIP - DABNEY FACTORS - In order to determine whether a confidential relationship is present, a court should consider whether: (1) one person has to be taken care of by others, (2) one person maintains a close relationship with another, (3) one person is provided transportation and has her medical care provided for by another, (4) one person maintains joint accounts with another, (5) one is physically or mentally weak, (6) one is of advanced age or poor health, and (7) there exists a power of attorney between the one and another

WILLS & ESTATES - TESTATOR'S INTENT - UNDUE INFLUENCE - Absent a showing of a confidential relationship between the grantor/testator and the beneficiary, undue influence must be proved from the evidence and is said to be found when an advisor has been so importunate as to subdue the testator's will and free agency

WILLS & ESTATES - MENTAL INCAPACITY - FACTORS - To prove mental incapacity, the contestants must show that the person either (1) did not understand the legal consequences of his actions; (2) suffered from a general weakness or intellect with either inadequate consideration given for the transfer, or a confidential relationship; or (3) suffered from permanent insanity up to and after the date of execution

WILLS & ESTATES - TESTAMENTARY CAPACITY - FACTORS - Testamentary capacity requires that a testator (1) understand and appreciate the nature and effect of his act; (2) the natural objects or persons to receive his bounty and their relation to him; and (3) be able to determine what disposition he desires to make of his property

FACTS

Newell Gene Warren ("Mr. Warren") was the father of Sherry Maharrey ("Sherry") and Terry Warren ("Terry"). At the time of Mr. Warren's death in 2018, he was married to his second wife, Gladys P. Warren ("Gladys"). Mr. Warren and his son Terry did not always get along, and Terry often made comments regarding the amount of money he was going to receive once his father died. Mr. Warren did not appreciate these comments and found them disrespectful. As a result, in 2016, Mr. Warren reduced Terry's cash bequest in his previous will by \$95,000 and made Sherry the executor of the will instead of Gladys. In 2017, Mr. Warren executed a new will and, along with other provisions, removed Terry's cash bequest entirely, left him property, and gifted the remainder of the estate to Sherry. The two attorneys who were present never questioned Mr. Warren's capacity nor Sherry's involvement, as she was not present when the will was executed. Between the years of 2017 and 2018, Mr. Warren made two inter vivos transfers to Sherry. In 2017, Mr. Warren gifted Sherry his Symetra annuity, and in 2018, Mr. Warren and Sherry established a joint checking account to pay the taxes associated with it. The financial planner who prepared these transfers testified that Mr. Warren exercised independent consent and judgment. Even though Sherry was Mr. Warren's power of attorney, Sherry never used the power of attorney in connection with the inter vivos transfers or the 2017 will and instead only used it to file Mr. Warren's tax returns, per his instructions. Sherry testified that she was instructed by her father to keep this all a secret as her father wanted to avoid conflict with Gladys and Terry. When Gladys and Terry found out, both of them were mad and confronted the financial planner in a meeting directed by them. Mr. Warren's physician testified for Gladys and Terry and stated that Mr. Warren had vascular dementia, which caused his mental activity to be affected; however, Mr. Warren's medical records never reflected dementia or the physician's findings. Following Mr. Warren's death, Sherry filed a petition to probate the 2017 will and sought issuance of letters of testamentary. Gladys and Terry filed a petition contesting the 2017 will and the two inter vivos transfers. The chancery court denied the petition and determined that both the 2017 will and the inter vivos transfers were valid. Gladys and Terry appealed.

ISSUES

Whether the chancery court erred in finding that (1) no confidential relationship existed between Sherry and Mr. Warren; (2) there was no evidence of undue influence between Sherry and Mr. Warren; (3) Mr. Warren had the requisite mental capacity when he made the inter vivos transfers; and (4) Mr. Warren had the requisite testamentary capacity when he executed his 2017 will.

HOLDING

(1) Because Sherry exercised her power of attorney only once and established the joint checking account only after Mr. Warren instructed her to, and because Mr. Warren did not depend on Sherry for transportation or daily activities, a confidential relationship did not exist between Sherry and Mr. Warren. (2) Because the two attorneys and financial advisor testified that Mr. Warren acted independently and without any influence from Sherry, there was no evidence of undue influence. (3) Because Mr. Warren’s physician never noted or recorded that Mr. Warren was showing signs of dementia, and because the financial planner testified that Mr. Warren was at all times aware of what he was doing, Mr. Warren had the requisite mental capacity when he made the inter vivos transfers. (4) Because the two attorneys testified that Mr. Warren understood and appreciated the effects of his actions, Mr. Warren had the requisite testamentary capacity when he executed his 2017 will. Therefore, the Court of Appeals affirmed the judgment of the Yalobusha County Chancery Court.

Affirmed - 2023-CA-00438-COA (July 23, 2024)

Opinion by Presiding Judge Carlton

Hon. Vicki B. Daniels (Yalobusha County Chancery Court, Second Judicial Dist.)

Charles M. Merkel Jr. & Robert Alexander Carson III for Appellants - J. Hale Freeland for Appellee

Briefed by [Kellis Adams](#)

Edited by [Sarah Schlager](#) & [William Davis](#)

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WREN V. ZELLERS

CIVIL - PERSONAL INJURY

CIVIL PROCEDURE - MOTION PRACTICE - INVOLUNTARY DISMISSAL - The considerations to be weighed in determining whether to affirm a Miss. R. Civ. P. 41(b) dismissal with prejudice are (1) whether there was a clear record of delay or contumacious conduct by the plaintiff, (2) whether lesser sanctions may have better served the interests of justice, and (3) the existence of other aggravating factors

CIVIL PROCEDURE - DISMISSAL - FAILURE TO PROSECUTE - If there is a clear record of delay, there is no need for a showing of contumacious conduct

CIVIL PROCEDURE - DISMISSAL - LESSER SANCTIONS - A clerk’s notice of dismissal, being an explicit warning, is a lesser sanction

FACTS

In August 2017, Tomekicia and Symone Wren (“the Wrens”) were involved in an automobile accident with John Zellers. The Wrens filed a negligence suit against Zellers in January 2019. Soon after, the Wrens served Zellers with interrogatories on February 1, 2019, and Zellers quickly responded on February 21, 2019. Included in Zellers response were a first set of interrogatories and a request for production of documents, which remained unanswered by the Wrens past the March 2019 deadline with no extension of time requested. In May 2019, Zellers filed a motion to compel responses from the Wrens while the case was still in the discovery stage. In July 2019, Zellers filed a notice of hearing on the motion to compel, to be held on August 29, 2019. The Wrens tendered responses on August 23, 2019, and the hearing was therefore canceled. In May 2021, the circuit court clerk filed a motion to dismiss the Wrens’ case “for want of prosecution pursuant to Rule 41(d)(1) of the Mississippi Rules of Civil Procedure” because there had been no action on the record in the preceding twelve months. In June of 2021, the Wrens filed a notice to offer self-authenticating medical records. In early January and February 2022, after a notice and re-notice to take video depositions with a treating physician, the Wrens canceled an “hour and fifteen minutes” before the scheduled deposition was supposed to start on February 11, 2022. Zellers filed a motion to dismiss for lack of prosecution in July 2022. The Wrens tendered excuses as to why there was such a delay to prosecute their case, including the COVID-19 pandemic, changes in Zellers’s insurance provider, and changes in Zellers’s counsel. The circuit court found that there was a clear record of delay. Following years of inaction, the court ultimately dismissed the case for lack of prosecution in accordance with Miss. R. Civ. P. 41(b). The circuit court also found that because of the extent

of the delays throughout the litigation, lesser sanctions would be insufficient to expedite proceedings. The Wrens appealed.

ISSUE

Whether the circuit court abused its discretion in dismissing the case for lack of prosecution.

HOLDING

Because there was a clear record of delay on the Wrens' part, and because lesser sanctions would have been insufficient to expedite the proceedings, the circuit court did not abuse its discretion in dismissing the case for lack of prosecution. Therefore, the Court of Appeals affirmed the judgment of the Desoto County Circuit Court.

Affirmed - 2023-CA-00152-COA (July 23, 2024)

Opinion by Judge Lawrence

Hon. Celeste Embrey Wilson (Desoto County Circuit Court)

D. Reid Wamble for Appellant - Jay Marshall Atkins, David Earl Rozier Jr., Jenessa Jo Carter Hicks, David Camp Pittman, & Elizabeth Claire Scott for Appellee

Briefed by [Dixon Stone](#)

Edited by [Summie Carlay](#) & [William Davis](#)

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COURT OF APPEALS - POST-CONVICTION RELIEF

BRADLEY V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - DENIAL - EVIDENTIARY HEARING - A court may summarily dismiss a post-conviction relief motion without an evidentiary hearing if it plainly appears from the face of the motion, any annexed exhibits, and the prior proceedings in the case that the movant is not entitled to any relief

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

POST-CONVICTION RELIEF - STATUTE OF LIMITATIONS - SUBSEQUENT MOTIONS - The post-conviction relief statute allows a prisoner to file subsequent motions for relief and motions after expiration of the statute of limitations if he can show: (1) that there has been an intervening decision of the United States Supreme Court or of the Mississippi Supreme Court that would have actually adversely affected the outcome of his conviction or sentence; (2) that he has new evidence that was not discoverable at the time of trial; (3) that his sentence has expired; or (4) that his probation or parole has been unlawfully revoked

FACTS

In 1991, Mondric Bradley was convicted of deliberate design murder and sentenced to life in prison. He was paroled in 2001 but returned to incarceration in 2002 on other charges. In 2003, a grand jury indicted Bradley for cocaine possession. In 2004, Bradley plead guilty to the charge, and the trial court sentenced him to three months in custody of the Mississippi Department of Corrections ("MDOC"). In 2010, MDOC denied Bradley parole, to which he sought administrative review, which was also denied. Bradley filed a post-conviction relief ("PCR") motion, asserting that the state illegally detained him. The court denied Bradley's motion as successive because he had already filed three PCR motions that had previously been denied. Bradley appealed, claiming his sentence and the revocation of his parole were illegal. The Court of Appeals affirmed the circuit court's dismissal. In 2018, Bradley filed another action seeking to vacate all orders denying him parole, claiming that MDOC illegally revoked his parole, which the circuit court treated as his fifth PCR motion and denied as being successive. Bradley again appealed, and the Court of Appeals affirmed the

dismissal in 2023. Bradley filed a motion for a rehearing, which was denied, and he filed a petition for writ of certiorari, which the Supreme Court denied. Bradley filed a series of motions at the trial and appellate court level. The motions were denied in May 2023, and jurisdiction was terminated. In June 2023, Bradley made yet another request, which the circuit court considered another PCR motion. The court denied Bradley's motion because it did not fall into a statutory exception to the successive motions bar and because the court lacked jurisdiction to reverse the parole revocation. Bradley appealed.

ISSUES

Whether (1) the successive-motions bar was unconstitutional; (2) the Court of Appeals erred in affirming the denials or dismissals of his prior PCR motions in 2023; and (3) Bradley fell into the statutory exception to the successive-motions bar for serving an illegal sentence.

HOLDING

(1) Because the Supreme Court previously upheld the application of the successive-motions bar, Bradley's claim that the successive-motions bar was unconstitutional lacked merit. (2) Because the Supreme Court mandate denying Bradley's writ of certiorari issued in September 2023, the Court of Appeals lacked jurisdiction to address any claimed errors in the prior case. (3) Because Bradley's claim repeated arguments made in his previous PCR motions, which resulted in final judgments, Bradley's claim was procedurally barred as successive. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Circuit Court.

Affirmed - 2023-CP-00763-COA (July 23, 2024)

Opinion by Judge McDonald

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

Pro se for Appellant - Casey Bonner Farmer (Att'y Gen. Office) for Appellee

Briefed by [Victoria Warren](#)

Edited by [Emily Kaplan](#) & [William Davis](#)

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BROWN V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - STATUTE OF LIMITATIONS - FAILURE TO FILE - Under Miss. Code Ann. § 99-39-5(2), a post-conviction relief motion following a defendant's guilty plea must be filed within three years after entry of the judgment of conviction

POST-CONVICTION RELIEF - STATUTE OF LIMITATIONS - EXCEPTIONS - Miss. Code Ann. § 99-39-5(2)(a)-(b) provides the following exceptions to the three-year statute of limitations on motions for post-conviction relief: cases where the petitioner can demonstrate (1) an intervening decision of the Supreme Court of either the State of Mississippi or the United States which would have actually adversely affected the outcome of his conviction sentence; (2) new evidence not reasonably discoverable at the time of trial; (3) biological evidence not tested or that could be subjected to new DNA testing that would have an impact on the conviction or sentence; and (4) instances where a movant's sentence has expired or his probation, parole, or conditional release has been unlawfully revoked

CRIMINAL PROCEDURE - SUFFICIENCY & WEIGHT OF EVIDENCE - ACTUAL INNOCENCE - To establish actual innocence, a petitioner must demonstrate that, in light of all the evidence, it is more likely than not that no reasonable juror would have convicted him

FACTS

In 2017, Eddie Brown was charged with Count I, second-degree murder, and Count II, possession of a firearm by a felon. In October 2018, during his trial, Brown accepted the State's plea agreement and pled guilty to the charges, and the trial court entered the judgment and sentencing order the following day. In January 2022, Brown filed a motion for post-conviction relief, seeking to set aside his guilty plea and asserting several claims of error. In April 2022, the trial

court denied Brown’s motion, finding no merit to his claims and that his motion was time-barred under Miss. Code Ann. § 99-39-5(2) of the Uniform Post-Conviction Collateral Relief Act (“UPCCRA”). Brown appealed.

ISSUES

Whether the trial court erred in finding that (1) Brown’s post-conviction relief motion was time-barred and (2) there was no merit to Brown’s claim of his actual innocence.

HOLDING

(1) Because Brown filed his post-conviction relief motion more than three years following the entry of the judgment of conviction, his motion was time-barred under Miss. Code Ann. § 99-39-5(2). (2) Because Brown provided no evidence to establish his actual innocence and admitted to killing the victim in his guilty-plea petition, there was no merit to Brown’s claim of his actual innocence. Therefore, the Court of Appeals affirmed the judgment of the Leflore County Circuit Court.

Affirmed - 2023-CP-00171-COA (July 23, 2024)

Opinion by Chief Judge Barnes

Hon. W. Ashley Hines (Leflore County Circuit Court)

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

Briefed by [Payne Phillips](#)

Edited by [Sarah Schlager](#) & [William Davis](#)

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NORMAN V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - MOTION FOR RELIEF - OUT-OF-TIME APPEAL - Under Miss. Code Ann. § 99-39-5(1)(i), the Uniform Post-Conviction Collateral Relief Act (“UPCCRA”) permits “any person sentenced by a court of record of the State of Mississippi to file a PCR motion on the basis that he is entitled to any out-of-time appeal”

POST-CONVICTION RELIEF - STATUTE OF LIMITATIONS - MOTION FOR RELIEF - A motion for relief under Miss. Code Ann. § 99-39-5(2) shall be made within three (3) years after the time in which the petitioner’s direct appeal is ruled upon by the Supreme Court of Mississippi or, in case no appeal is taken, within three (3) years after the time for taking an appeal from the judgment of conviction or sentence has expired

POST-CONVICTION RELIEF - DENIAL OF RELIEF - FINAL JUDGMENT - Pursuant to Miss. Code Ann. § 99-39-23(6), a prior dismissal of a petitioner’s motion or other denial of relief is a final judgment and shall be conclusive until reversed and shall be a bar to a second or successive motion under the UPCCRA

FACTS

In January 2021, Ordell Norman was convicted of possession of a controlled substance. Representing himself with advisory counsel present, Norman was sentenced by the circuit court in February 2021 and did not appeal the conviction. In October 2021, Norman filed a “Post-Conviction Petition for Out of Time Appeal, Appointment of Appellate Counsel and for Other Relief” alleging that neither the circuit court nor his advisory counsel informed him of his right to appeal. While the first motion was pending, Norman filed a second post-conviction relief (“PCR”) motion in April 2022 for an out-of-time appeal, renewing his assertion that he was uninformed about his right to appeal. These two motions requested relief pursuant to Miss. R. App. P. 4(g) and Miss. Code Ann. § 99-39-5(1)(i). In May 2022, the circuit court issued two orders denying Norman’s motions. The circuit court cited Miss. R. App. P. 4(h), which permits reopening of the appeal period if a party proves lack of notice and files within 180 days of judgment or within seven days of notice receipt, whichever is earlier. The circuit court found no evidence that Norman received notice of his sentencing order. However, because Norman filed his motions more than 180 days after the sentencing order, the court ruled it lacked jurisdiction and denied his motions. Norman did not appeal the court’s May 2022 orders. In February

2023, Norman filed a third petition seeking an out-of-time appeal, again arguing he was not informed at trial of his right to appeal. This petition specifically cited Miss. Code Ann. § 99-39-5(1)(i). In February 2023, the circuit court denied Norman’s motion on the grounds that it was his third motion and that he made no argument that the court obtained jurisdiction or error in its pervious order. Norman appealed.

ISSUE

Whether the circuit court erred by failing to consider Norman’s appeal.

HOLDING

Because Norman’s PCR motion for an out-of-time appeal was timely filed under the three-year period imposed by Miss. Code Ann. § 99-39-5(2), and because the circuit court’s dismissal of Norman’s motions was not based on Miss. Code Ann. § 99-39-5(2), the circuit court erred in failing to consider Norman’s motion. Therefore, the Court of Appeals reversed and remanded the judgment of the Lamar County Circuit.

DISSENT

Judge Emfinger argued that the circuit court correctly denied Norman’s third motion for an out-of-time appeal. He argued that Norman’s third motion for an out-of-time appeal was barred as successive pursuant to Miss. Code Ann. § 99-39-23(6). Further, he contended that had Norman appealed his first denial of his request for an out-of-time appeal, the likely result would have been to reverse and remand; however, he argued that the same results should not apply to Norman’s third effort.

Reversed & Remanded - 2023-CP-00296-COA (July 23, 2024)

Opinion by Chief Judge Barnes - Dissent by Judge Emfinger

Hon. Brad Ashley Touchstone (Lamar County Circuit Court)

Pro se for Appellant - Casey Bonner Farmer (Att’y Gen. Office) for Appellee

Briefed by [Olivia Knight](#)

Edited by [Summie Carlay](#) & [William Davis](#)

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PRICE V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - STATUTE OF LIMITATIONS - EXCEPTIONS - Miss. Code Ann. § 99-39-5(2) includes the following exceptions to the three-year statute of limitations on motions for post-conviction relief: cases where (1) the Mississippi Supreme Court or the United States has rendered an intervening decision that would adversely affect the outcome of the conviction or sentence; (2) the defendant presents evidence not reasonably discoverable at trial that would have been practically conclusive at that time to cause a different result in conviction or sentencing; and (3) the defendant’s sentence has expired or his probation, parole, or conditional release has been unlawfully revoked

JUDICIAL CONDUCT - RECUSAL - ADVERSE ROLE - Judges must recuse themselves if they participated in an adverse role in the original case of the defendant, or the case will face automatic reversal

FACTS

In June 2002, Dustin Price was indicted for statutory rape and gratification of lust with a minor. Price pled guilty to a single charge of lust gratification. Price was sentenced by the trial court to serve thirty months in the custody of the Mississippi Department of Corrections and to register as a sex offender. In May 2020, Price’s alleged victim attested in an affidavit that she never had intimate relations with Price and that she felt pressured to help the investigation, which is why she stated that she and Price had intimate relations even though they did not. Price filed a post-conviction relief motion in May 2021 claiming that the victim’s affidavit exempted his motion from the three-year time-bar under Miss. Code Ann. § 99-39-5(2). In March 2023, the circuit court dismissed the motion with prejudice, stating that the evidence presented was available when Price entered his guilty plea. Price subsequently filed a motion for rehearing or to alter or

amend the judgment, specifically noting that the circuit court judge who dismissed the motion had been the district attorney for Hinds County at the time of his indictment and plea colloquy. His motion also stated that he intended to raise this issue at the hearing so that her recusal could be addressed. In August 2023, the same circuit court judge denied Price's motion and request for recusal. Price appealed.

ISSUE

Whether the circuit court judge was disqualified from ruling on Price's motion.

HOLDING

Because the circuit court judge was the district attorney for Hinds County at the time of Price's indictment and plea colloquy, the circuit court judge was disqualified from ruling on Price's motion. Therefore, the Court of Appeals vacated and remanded the judgment of the Hinds County Circuit Court.

Vacated & Remanded - 2023-CA-00941-COA (July 23, 2024)

Opinion by Chief Judge Barnes

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

Kevin Dale Camp for Appellant - Barbara Wakeland Byrd (Att'y Gen. Office) for Appellee

Briefed by [Katie Lowe](#)

Edited by [Mattie Hooker](#) & [William Davis](#)

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COURT OF APPEALS - CRIMINAL CASES

BROWN V. STATE

CRIMINAL - FELONY

EVIDENCE - WITNESS'S CHARACTER FOR TRUTHFULNESS - EXTRINSIC EVIDENCE - Evidence of truthful character is admissible only after the witness's character for truthfulness has been attacked; except for a criminal conviction under Miss. R. Evid. 609, extrinsic evidence is not admissible to prove specific instances of a witness's conduct in order to attack or support the witness's character for truthfulness, and the extrinsic evidence prohibition bars the use of any kind of evidence, including documents or the testimony of other witnesses, except a direct admission by the witness being cross-examined

CRIMINAL PROCEDURE - INDICTMENT - SEXUAL BATTERY - A specific date in a child sexual abuse case is not required so long as the defendant is fully and fairly advised of the charges against him

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

APPELLATE PROCEDURE - PLAIN ERROR DOCTRINE - CLEAR AND OBVIOUS ERROR - An appellate court may exercise its discretion to review an issue for plain error only where the error is clear or obvious and affects the party's substantial rights

FACTS

Police arrived at fourteen-year-old Dana's house after being alerted that her stepfather, David Brown, had been sexually abusing her. When the police arrived, she told the police about the abuse and went to the hospital for a rape kit. Brown was later indicted on three counts of touching a child for lustful purposes and four counts of sexual battery. Prior to the trial, the State made a motion to preclude witnesses from opining as to the victim's truthfulness, and the trial court granted that motion. Brown's counsel filed a motion to quash his indictment, specifically arguing that Counts III and VII lacked specificity. Brown argued that two definite dates were provided in discovery and that the State should not

be allowed to cite a date range in Counts III and VII. The trial court denied the motion. At trial, the State called Dana as a witness, who testified regarding the nature of Brown's abuse. The State also called the lead detective over Brown's investigation who testified that Dana went through a forensic interview in which she identified the types of abuse that she suffered from Brown. Brown testified that he did not sexually abuse Dana in any way and indicated that she made up the allegations. The defense sought to call Karen Brown, Brown's mother and Dana's step-grandmother. Karen stated that she overheard a conversation between Dana and the lead detective over Brown's investigation in which the detective told Dana if she was lying, she could go to jail. Karen said that after the detective left, Dana asked her what kind of jail she could go to or if she would go to foster care. The State argued that Karen's testimony was inadmissible hearsay and further argued that the testimony was an improper impeachment of Dana's credibility by the defense because the overheard conversation was not confirmed by Dana or the detective. The trial court ruled that Karen's testimony would be shown or offered to prove the truth of the matter asserted, and the testimony was inadmissible hearsay. The trial court also ruled that it should be excluded because its probative value would be substantially outweighed by the danger of unfair prejudice. Brown was found guilty of all seven counts and sentenced. The trial court denied Brown's motion for judgment notwithstanding the verdict or a new trial. Brown appealed.

ISSUES

Whether (1) the trial court acted within its discretion by excluding Karen Brown's proffered testimony; (2) the indictment was legally sufficient; (3) there was sufficient evidence to support Brown's convictions; and (4) there was plain error.

HOLDING

(1) Because the defense did not lay the predicate for attacking Dana's character for truthfulness through questioning of either the detective or Dana, the trial court acted within its discretion by excluding Karen's proffered testimony. (2) Because Brown was apprised of the charges against him and suffered no prejudice in preparing an adequate defense, the indictment was legally sufficient. (3) Because a rational trier of fact could have found the essential elements of the crimes beyond a reasonable doubt, there was sufficient evidence to support Brown's convictions. (4) Because there was no clear or obvious error that affected Brown's substantial rights, there was no plain error. Therefore, the Court of Appeals affirmed the judgment of the Harrison County Circuit Court.

Affirmed - 2023-KA-00082-COA (July 23, 2024)

Opinion by Judge McCarty

Hon. Christopher Louis Schmidt (Harrison County Circuit Court, First Judicial Dist.)

Lance O'Neal Mixon & Thomas Boyd Shaw for Appellant - Barbara Wakeland Byrd (Att'y Gen. Office) for Appellee

Briefed by [Christina Burse](#)

Edited by [Mattie Hooker](#) & [William Davis](#)

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GIBSON V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - APPEAL - LINDSEY BRIEF - Pursuant to *Lindsey v. State*, if appellate counsel represents an indigent criminal defendant, counsel may file a brief indicating in good faith a lack of arguable issues on appeal and request an extension so the defendant can file a pro se brief

CRIMINAL PROCEDURE - SUPPLEMENTAL BRIEF - FAILURE TO FILE - When failing to file a supplemental pro se brief during an appeal as a matter of right, and no arguable issues have been presented, the appellate court may independently review the record and convey its decision on the appeal

FACTS

A Forrest County Sheriff's Department deputy observed a car stopped in the middle of the road, but when the deputy approached the vehicle, it drove away at a high rate of speed. After following the vehicle until it stopped, the deputy

approached the vehicle and learned that Daniel Hobson was driving with Rebecca Gibson in the passenger seat. Hobson sped off, and Gibson threw a bag out of the window with a meth pipe that had been previously used. After being stopped again, the deputy spoke to Gibson while Hobson was being arrested. Gibson admitted to having marijuana, glass pipes, and methamphetamine. Gibson was arrested and indicted for possession of more than two grams but less than ten grams of methamphetamine by a Forrest County grand jury in violation of Miss. Code. Ann. § 41-29-139(c). At trial, the State called the arresting deputy, a narcotics officer with Forrest County, and Shelby Bintz, a forensic scientist with the Mississippi Forensics Laboratory, as witnesses. Gibson also testified at trial about the day of her arrest, admitting to the possession. Gibson was convicted as charged and sentenced by the court. Gibson appealed.

ISSUE

Whether there were any arguable issues on appeal to overturn Gibson’s possession of a controlled substance conviction.

HOLDING

Because the defense counsel raised no actionable issues on appeal through an appellate brief in compliance with *Lindsey v. State*, and because Gibson never filed the granted supplemental pro se brief, there was legally sufficient evidence to uphold Gibson’s possession of a controlled substance conviction. Therefore, the Court of Appeals affirmed the judgment of the Forrest County Circuit Court.

Affirmed - 2023-KA-00821-COA (July 23, 2024)

Opinion by Judge Lawrence

Hon. Jon Mark Weathers (Forrest County Circuit Court)

Justin Taylor Cook (Pub. Def. Office) for Appellant - Allison Elizabeth Horne (Att’y Gen. Office) for Appellee

Briefed by [Eleanor Kast](#)

Edited by [Mattie Hooker](#) & [William Davis](#)

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GRAYSON V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - APPEAL - LINDSEY BRIEF - Pursuant to *Lindsey v. State*, if appellate counsel represents an indigent criminal defendant, counsel may file a brief indicating in good faith a lack of arguable issues on appeal and request an extension so the defendant can file a pro se brief

CRIMINAL PROCEDURE - SUPPLEMENTAL BRIEF - FAILURE TO FILE - When failing to file a supplemental pro se brief during an appeal as a matter of right, and no arguable issues have been presented, the appellate court may independently review the record and convey its decision on the appeal

FACTS

Thomas Grayson was indicted for aggravated assault after shooting Dquavion Marshall at a Wendy’s. Marshall and Charles Reed had a disagreement over a woman. Marshall let Reed know he was at the Wendy’s, and Reed arrived with Grayson. Grayson approached Marshall, who was in his car. Grayson threatened Marshall, Marshall pulled out his gun, and Grayson shot Marshall in the arm. At trial, Grayson offered no witnesses in his defense. The trial court refused proposed jury instructions on self-defense due to a lack of evidence of self-defense. The jury convicted Grayson, and Grayson moved for a new trial which the court denied. Grayson appealed.

ISSUE

Whether there were any arguable issues on appeal to overturn Grayson’s aggravated assault conviction.

HOLDING

Because the defense counsel raised no actionable issues on appeal through an appellate brief in compliance with *Lindsey v. State*, and because Grayson never filed the granted supplemental pro se brief, there was legally sufficient evidence to

uphold Grayson’s aggravated assault conviction. Therefore, the Court of Appeals affirmed the judgment of the Neshoba County Circuit Court.

Affirmed - 2023-KA-00400-COA (July 23, 2024)

Opinion by Judge McDonald

Hon. Mark Sheldon Duncan (Neshoba County Circuit Court)

Zakia Butler Chamberlain (Pub. Def. Office) for Appellant - Scott Stuart (Att’y Gen. Office) for Appellee

Briefed by [Lexi Killebrew](#)

Edited by [Robert “Duncan” Jones](#) & [William Davis](#)

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