

**MISSISSIPPI SUPREME COURT DECISIONS – SEPTEMBER 5, 2024*****SUPREME COURT - ORDERS*****CAGE V. STATE****CORRECTED EN BANC ORDER****ORDER**

This corrected en banc Order by the Supreme Court denied Jeremy Cage’s Application for Leave to Proceed in the Trial Court, as amended. In 2014, the Supreme Court affirmed Cage’s conviction of statutory rape. In 2017, he filed an application for leave to seek post-conviction relief (“PCR”) and was denied. Cage initially petitioned to have the trial court reclassify his crime as nonviolent to be eligible for parole. The matters were not properly before the Court and were denied. In his amended application for leave, he challenged his indictment and asserted his trial counsel was ineffective for not objecting to the same issue. However, there was no merit to these claims. Further, the ineffective assistance of counsel claim was time barred and successive pursuant to Miss. Code Ann. § 99-39-5(2), -27(9). The Court also found Cage’s filing to be frivolous and warned him that future frivolous filings may result in monetary sanctions and restrictions on filing PCR applications. Therefore, the Supreme Court denied Cage’s application for leave.

**OBJECTION IN PART**

Presiding Justice King agreed that Cage’s PCR application lacked merit but argued that the application was not frivolous. He believed that Cage made reasonable arguments in the application that did not fit in line with the definition of a frivolous motion in which the movant would have no hope of success. He further disagreed that monetary sanctions or restrictions on subsequent filings should be imposed on Cage because doing so would punish him for his lawful right to appeal.

**Denied - 2017-M-01498 (Sept. 4, 2024)**

Corrected En Banc Order by Justice Ishee - Objection in Part by Presiding Justice King

Briefed by [Natalie Xan](#)

Edited by [Robert “Duncan” Jones](#) & [Emily Phillips](#)

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**WILSON V. STATE****EN BANC ORDER****ORDER**

This en banc Order by the Supreme Court denied Christopher Wilson’s filed Application for Leave to Proceed in the Trial Court. Wilson was convicted of murder and sentenced to life imprisonment, which were both affirmed on direct appeal. The Supreme Court considered the application successive because Wilson filed ten previous petitions that were all denied. Further, the Supreme Court stated that Wilson’s petition was time-barred. Wilson was previously warned that future filings deemed frivolous would result in monetary sanctions and filing application restrictions for post-conviction collateral relief in forma pauperis. Therefore, the Supreme Court denied Wilson’s application for leave.

**OBJECTION IN PART**

Presiding Justice King opposed the Supreme Court’s order restricting Wilson from filing further petitions for post-conviction collateral relief in forma pauperis. He argued that the restriction displayed the Supreme Court’s prioritization of efficiency over justice and served to punish indigent defendants and violate their rights under the State Constitution and their fundamental right to vindicate their constitutional rights. He also discussed how defendants with monetary resources are allowed to file endless petitions, while indigent defendants are forced to sit silently. He argued that instead of restricting Wilson’s access to the courts, he would simply find the petition lacked merit.

**Denied with Sanctions - 2017-M-00230 (Sept. 5, 2024)**

En Banc Order by Justice Ishee - Objection in Part by Presiding Justice King  
Briefed by [Douglas "Trey" Hubner III](#)  
Edited by [Mattie Hooker](#) & [Emily Phillips](#)

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## ***SUPREME COURT - POST-CONVICTION RELIEF***

### **JOHNSON V. STATE**

#### **CRIMINAL - POST-CONVICTION RELIEF**

**CIVIL PROCEDURE - POST-CONVICTION RELIEF - SENTENCING FOR JUVENILES** - Amended Miss. Code Ann. § 97-3-21 allows for a judge to “fix the penalty” for a defendant who was under the age of eighteen at the time of his crimes if he was convicted prior to July 1, 2024

**CRIMINAL PROCEDURE - JUVENILE SENTENCING - LIFE SENTENCE** - When a trial judge applies the correct law and supports his conclusions with substantive evidence, a juvenile may still receive a life sentence without possibility of parole

**CRIMINAL PROCEDURE - SENTENCING - MILLER FACTORS** - When sentencing a juvenile offender, the factors to be considered to ensure a proportional and constitutional life-without-parole sentence are: the juvenile’s age and hallmark features such as immaturity and failure to appreciate risk; family and home environment; circumstances of the homicide offense; whether he might have been charged of a lesser offense if “not for incompetencies associated with youth”; and the possibility of rehabilitation

#### **FACTS**

In 1998, Michael Johnson and his friend, Aaron Johnson (“Aaron”), plotted to kill Aaron’s roommate, Dustin Parker, just before Johnson’s eighteenth birthday. They theorized many different methods before they decided on bludgeoning Parker in his sleep. Johnson and Aaron lined Parker’s room with plastic to help with the clean-up, killed Parker, and wrapped his body in the plastic before burying him in the woods. Johnson and his friend came up with stories about what had happened to Parker, but over the following year, Johnson bragged to several people about killing and burying Parker. A jury found Johnson guilty of deliberate-design murder, or first-degree murder, sentencing him to life in prison, and the parole statute did not allow for possibility of parole. Twelve years later, the U.S. Supreme Court held that mandatory life-without-parole sentences for defendants who were under eighteen at the time of their crimes were unconstitutional in *Miller v. Alabama*, and Johnson sought post-conviction relief. The trial court vacated Johnson’s sentence, and it conducted a sentencing hearing to consider factors outlined by the U.S. Supreme Court for a court to impose life-without-parole upon a juvenile. The trial court reinstated Johnson’s sentence and found that the application of the parole statute that removed parole eligibility for first-degree murderers was not constitutionally prohibited. Johnson appealed.

#### **ISSUES**

Whether (1) Miss. Code Ann. § 99-19-101 required jury sentencing for juveniles convicted of deliberate design, or first-degree, murder and (2) the trial court misapplied law and misinterpreted facts when sentencing Johnson to life in prison without parole.

## **HOLDING**

(1) Because recent statutory amendments allowed courts rather than juries to sentence juveniles who were convicted of first-degree murder prior to July 1, 2024, Miss. Code Ann. § 99-19-101 did not apply. (2) Because the trial court considered factors outlined by the U.S. Supreme Court in *Miller* as well as the evidence from all witnesses, the trial court did not misapply law or misinterpret facts when sentencing Johnson. Therefore, the Supreme Court affirmed the judgment of the Rankin County Circuit Court.

## **CONCURRENCE IN PART & IN RESULT**

Justice Coleman agreed with the majority but noted his continued disagreement with the Supreme Court over previous decisions applying Miss. Code Ann. § 99-19-101. He argued the amended legislation that provided an exception to the jury sentencing requirement for defendants who have not yet reached the age of eighteen at the time of their crimes did not take effect until after the effective date of the amendment, and as such, Justice Coleman maintained his dissents in earlier cases.

### **Affirmed - 2023-CA-00117-SCT (Sep. 5, 2024)**

En Banc Opinion by Justice Maxwell - Concurrence in Part & in Result by Justice Coleman

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

George T. Holmes & Justin Taylor Cook (Pub. Def. Office) for Appellant - Casey Bonner Farmer (Att’y Gen. Office) for Appellee

Briefed by [Connor Dixon](#)

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

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## **MISSISSIPPI COURT OF APPEALS DECISIONS – SEPTEMBER 3, 2024**

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

## **FORTNER V. BRATCHER**

### **CIVIL - DOMESTIC RELATIONS**

**CIVIL PROCEDURE - CONTEMPT - DISCRETION** - Whether a party is in contempt is decided on a case-by-case basis and is proper when the contemner has willfully and deliberately ignored the order of the court; the chancery court has substantial discretion in deciding if a party is in contempt

**FAMILY LAW - CUSTODY - VISITATION MODIFICATION** - The chancery court has sound discretion to modify visitation, and the chancery court is charged with fashioning a visitation schedule that is in the best interests of the child

### **FACTS**

Shane Fortner and Pamela Bratcher were married and had one child, R.F. They divorced and entered into a custody agreement, which was incorporated into their final divorce judgment in 2018. The agreement specified that Bratcher would have custody of R.F. and Fortner would have visitation. Additionally, Fortner would have four weeks of visitation during the summer months and would bear the costs of exercising his visitation rights, including transportation costs. After their divorce, both parties filed multiple petitions for contempt and to modify visitation or custody. Fortner also made numerous allegations to Child Protective Services (“CPS”), none of which resulted in a finding of neglect or abuse. In January 2022, the chancery court adjusted the visitation schedule for the summer months to have Fortner and Bratcher alternate weeks beginning at 5:00 p.m. on Friday after school was out for one week and swapping weekly. Bratcher then filed an amended motion for contempt and modification, requesting clarification of the parties’ summer visitation schedule, and alleging that Fortner had refused to return R.F. after his weekend visitation and refused to transport R.F. The chancery court held a hearing for the pending petitions for contempt and modification where Bratcher testified that Fortner did not return R.F. on six different occasions. She also testified that Fortner had made

ten to fifteen reports to CPS since 2017. Bratcher testified further that she had \$2,838 in attorney's fees as a result of Fortner's contempt and that the cost of picking up R.F. each time Fortner failed to return the child totaled \$78.39. The chancery court ordered Fortner to pay Bratcher the \$2,838 for attorney's fees, the \$470.34 for transportation expenses, and a \$1,000 bond for any future contempt-related expenses. Additionally, the chancery court ruled that neither party should directly inform CPS of any allegations of neglect or abuse without first contacting and consulting with local law enforcement. Lastly, the chancery court clarified the parties' summer visitation schedule to mean that Fortner's visitation began at 5:00 p.m. on the first Friday after seven days from the last day of school. Fortner appealed.

## ISSUES

Whether the chancery court erred or abused its discretion by (1) finding Fortner in contempt; (2) declining to modify the parties' visitation schedule to give Fortner more than four weeks of summer visitation; and (3) ordering both parties to report any future allegations of abuse or neglect to law enforcement before reporting the allegations to CPS.

## HOLDING

(1) Because the chancery court had substantial discretion in deciding whether a party was in contempt, and because Fortner willfully failed to comply with the transportation provision of the divorce decree, the chancery court did not err or abuse its discretion by finding Fortner in contempt. (2) Because Fortner originally agreed to four weeks of summer visitation in the parties' 2018 agreement, and because the chancery court had discretion to modify visitation orders, the chancery court did not err or abuse its discretion by declining to modify the parties' visitation schedule to give Fortner more than four weeks of summer visitation. (3) Because the chancery court's order could be read to avoid conflict with the CPS reporting statute and to discourage false allegations to CPS, the chancery court did not err or abuse its discretion by ordering both parties to report any future allegations of abuse or neglect to law enforcement before reporting the allegations to CPS. Therefore, the Court of Appeals affirmed the judgment of the Panola County Chancery Court.

### **Affirmed - 2023-CP-00664-COA (Sept. 3, 2024)**

Opinion by Presiding Judge Wilson

Hon. Percy L. Lynchard Jr. (Panola County Chancery Court, Second Judicial Dist.)

*Pro se* for Appellant - Jerry Wesley Hisaw & Leigh Ann Darby for Appellee

Briefed by [Abby Church](#)

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

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## **HAVARD V. HART**

### **CIVIL - PERSONAL INJURY**

**CIVIL PROCEDURE - SERVICE OF PROCESS - ABODE** - Under Miss. R. Civ. P. 4(d)(1)(B), if an individual cannot be served with process with reasonable diligence, the serving party must leave a copy of the summons and complaint at the defendant's usual place of abode with the defendant's spouse or some other person of the defendant's family above the age of sixteen years who is willing to receive service, and by thereafter mailing a copy of the summons and complaint (by first class mail, postage prepaid) to the person to be served at the place where a copy of the summons and of the complaint were left

**CIVIL PROCEDURE - SERVICE OF PROCESS - GOOD CAUSE EXCEPTION** - Under Miss. R. Civ. P. 4(h), if a plaintiff can establish good cause for failing to serve process on a defendant within 120 days of filing his or her complaint, dismissal is not an appropriate remedy

**CIVIL PROCEDURE - SERVICE OF PROCESS - GOOD CAUSE EXCEPTION** - To demonstrate good cause, the plaintiff must show that a diligent effort was made to serve the defendant in a timely manner

## FACTS

In August 2017, Mary Havard was injured in a parking lot after Avie Hart struck her with her vehicle. In July 2020, Havard sued Hart for negligence. In October, a summons was issued to Hart. In November 2020, the process server

attempted to serve Hart at an address listed in the Accurint Report but found it to be unoccupied. The process server was then directed by a person exiting the neighboring trailer to a different address on Ryland Road where he handed the summons to Justin Anderson, who was not authorized to receive service. The process server assumed Anderson was related to Hart based solely on social media posts. Havard's attorney informed Hart's counsel by email in November 2020 of the service attempt. The email stated service was made on another person and that Hart was present at the time of service but "refused to accept the summons and complaint." There was no evidence in the record that Hart resided at the residence where Anderson was served. Hart's attorney later confirmed that Hart did not receive the summons. Havard did not re-serve Hart or request an extension of the service period. In October 2021, Hart moved to dismiss the complaint, asserting improper service and the expiration of the statute of limitations. Hart provided affidavits stating that she was not served, did not know Anderson, and resided at a different address on the date of service. Following a hearing, the circuit judge found that Hart was never properly served and dismissed the case. In November 2022, Havard filed a motion to alter or amend the judgment and for reconsideration and other relief, but the court denied that motion. Havard appealed.

### **ISSUES**

Whether the trial court (1) abused its discretion by finding that Hart was not served with process; and (2) erred by determining that Havard did not show good cause to rebut the improper service allegation.

### **HOLDING**

(1) Because Hart filed affidavits that stated that neither address the process server visited was her address, because the process server's reliance on the Accurint Report was not enough to prove that Hart was actually living at the Ryland Road Address, because Hart's father affirmed that he lived at the Ryland Road address at the time of service and Hart did not live with him, and because the process server left the summons and complaint with a non-member of the family, Justin Anderson, the trial court did not abuse its discretion by finding that Hart was not served with process. (2) Because Havard did not file a motion to extend the time period for service of process or re-serve Hart after discovering the improper service, the trial court did not err by determining that Havard did not show good cause to rebut the improper service allegation. Therefore, the Court of Appeals affirmed the judgment of the George County Circuit Court.

**Affirmed - 2023-CA-00260-COA (Sept. 3, 2024)**

Opinion by Judge Lawrence

Hon. Kathy King Jackson (George County Circuit Court)

Lee Turner for Appellant - Mark C. Carroll, Luke Enterkin Whitaker, Kelly McReynolds McLeod for Appellee

Briefed by [Madeline Riddick](#)

Edited by [Robert "Duncan" Jones](#) & [Emily Phillips](#)

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## **OLD HATTIESBURG HIGH, L.P. V. HARRIS CONSTR. SERVS., LLC**

### **CIVIL - OTHER**

**CIVIL PROCEDURE - DEFAULT JUDGMENTS - MOTION TO SET ASIDE** - Pursuant to Miss. R. Civ. P. 60(b), a trial court may grant relief based on a sufficient showing of fraud, mistake, or other justifiable reason

**CIVIL PROCEDURE - APPEALS - FINAL JUDGMENT** - A final, appealable judgment is one that adjudicates the merits of the controversy and settles all the issues as to all the parties and requires no further action by the lower court

**CIVIL PROCEDURE - INTERLOCUTORY APPEALS - CERTIFICATION** - An interlocutory order may only be appealed if the trial court expressly states that there is no just reason for delay and directs the entry of a final judgment as required by Miss. R. Civ. P. 54(b)

### **FACTS**

In 2018, Old Hattiesburg High, L.P. (“Old Hattiesburg”) and Harris Construction Services, LLC (“Harris Construction”) agreed to convert the former high school building in Hattiesburg into senior citizen apartments. They also entered into a joint venture to share the project’s profits or losses. The contract required Harris Construction to submit notarized applications for payment when outstanding payments became due. As the project progressed, Old Hattiesburg approved certain “change orders.” To avoid losing tax credits, Old Hattiesburg needed to complete the project by December 2020. Old Hattiesburg proposed, and Harris Construction agreed, to submit the final payment application, despite the project being incomplete. In January 2021, Harris Construction signed a “Contractor’s Lien Release and Subordination,” confirming all payments were satisfied. In subsequent litigation between the parties, Harris Construction claimed it continued work through March and was still owed for additional work. In July 2021, Harris Construction filed a construction lien on Old Hattiesburg’s property for its unpaid balance. In response, Old Hattiesburg petitioned to expunge the lien and asserted that Harris Construction had not notified it of the lien within the required two days, making it unenforceable. The chancery court scheduled a hearing for October 2021. However, no hearing was held on the petition because the matter was not placed on the court’s docket. Old Hattiesburg filed an amended petition and asserted an additional claim for a false lien penalty. In November, the court expunged the lien and ruled it was unenforceable due to lack of timely notice to Old Hattiesburg. Harris Construction failed to appear at the hearing as the summons had been sent to a previous address. Unaware of the November order, Harris Construction filed a suit to enforce the lien and claim the owed money. In January 2022, Harris Construction filed a motion for relief from the November order and argued it was obtained under inequitable circumstances. In July 2022, the chancery court granted Harris Construction’s motion to set aside the expungement order. Harris Construction filed counterclaims to Old Hattiesburg’s amended petition to expunge the lien, alleging breach of contract, breach of good faith, unjust enrichment, and quantum meruit. In August 2022, Old Hattiesburg filed a motion to set aside the July order that reinstated the lien, alleging that Harris Construction knowingly made false claims about not being served in the original hearing. In December, the chancery court denied Old Hattiesburg’s motion to set aside and request for sanctions. Old Hattiesburg appealed.

## **ISSUES**

Whether (1) the November 2021 expungement order was a final judgment; and (2) the subsequent order setting aside the expungement order and the order denying the motion to reinstate it were final judgments.

## **HOLDING**

(1) Because the chancery court intended to consider at a later time Old Hattiesburg’s damages claim, the November 2021 expungement order was not a final judgment, but rather an interim order that could be revised at any time. (2) Because the November 2021 expungement order was not final, the court’s orders on motions filed thereafter were not final judgments. Therefore, the Court of Appeals dismissed the appeal from the Forrest County Chancery Court.

### **Appeal Dismissed - 2023-CA-00579-COA (Sept. 3, 2024)**

Opinion by Judge McDonald

Hon. Rhea Hudson Sheldon (Forrest County Chancery Court)

Brian A. Hinton, Robert D. House, & Cecelia J. Hurt for Appellant - Ralph B. Germany Jr., Rankin S. Fortenberry, & James S. Fritz Jr. for Appellee

Briefed by [Joree Rose](#)

Edited by [Emily Kaplan](#) & [Emily Phillips](#)

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## **WILKERSON V. ALLRED**

### **CIVIL - PERSONAL INJURY**

**TORTS - BYSTANDER CLAIMS - ELEMENTS** - The elements of a bystander claim are whether the (1) plaintiff is located near the scene of the accident as contrasted with one who was a distance away from it; (2) shock resulted from a direct emotional impact upon plaintiff from the sensory and contemporaneous observance of the accident, as

contrasted with learning of the accident from others after its occurrence; (3) plaintiff and the victim were closely related, as contrasted with an absence of any relationship or the presence of only a distant relationship

**TORTS - INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS - ELEMENTS** - The elements of a claim for intentional infliction of emotional distress are (1) the defendant acted willfully or wantonly towards the plaintiff; (2) the defendant's acts are ones which evoke outrage or revulsion in civilized society; (3) the acts were directed at, or intended to cause harm to, the plaintiff; (4) the plaintiff suffered severe emotional distress as a direct result of the acts of the defendant; and (5) such resulting emotional distress was foreseeable from the intentional acts of the defendant

**TORTS - TRAUMATIZING EVENTS - NONBYSTANDER CLAIMS** - Plaintiffs who sue after being in close proximity to a traumatizing event but don't bring a bystander claim are extended the benefit of reasonable doubt on the notion that their claim is for something other than bystander recovery

**CIVIL PROCEDURE - APPELLATE REVIEW - SUMMARY JUDGMENT** - It is reversible error for a trial court to substitute its summary judgment for a jury's consideration of disputed material factual issues

### **FACTS**

In February 2019, Lexi Wilkerson had an eight-month-old puppy, with the intention of training the puppy to assist with her anxiety issues once it had reached one year old. Larry Allred was Wilkerson's neighbor and had previously visited her home to gift treats to the puppy. The incident at issue began when the puppy chased and ran alongside Allred as he drove past Wilkerson's residence to his property. Wilkerson's younger sister, Kaylee, went to retrieve the puppy, and as she approached Allred's property the puppy began walking towards her. Allred then cocked a shotgun and shot the puppy as it turned around, which also caused Kaylee to fall to the ground. Wilkerson heard the gunshot from inside her home and went outside a few minutes later after Kaylee informed her of what had happened. Wilkerson watched the puppy die and asked Allred why he shot the puppy. Allred responded by smirking and continuing to work in his yard. Wilkerson filed a complaint against Allred alleging intentional and negligent infliction of emotional distress. Allred asserted in his answer that he acted in self-defense, and he later moved for summary judgment. In her response to Allred's motion, Wilkerson asserted that she was not seeking recovery under a bystander theory. The trial court granted summary judgment and stated that Wilkerson could not recover. Wilkerson appealed.

### **ISSUE**

Whether the trial court erred by granting Allred's motion for summary judgment.

### **HOLDING**

Because there was a genuine dispute of material fact regarding Allred's intent and the foreseeability of the alleged emotional distress, the trial court erred by granting Allred's motion for summary judgment. Therefore, the Court of Appeals reversed and remanded the judgment of the Hinds County Circuit Court.

### **DISSENT**

Presiding Judge Carlton argued that Wilkerson could not recover under intentional infliction of emotional distress as a matter of law because she could not prove each of the elements and that Wilkerson could not recover under negligent infliction of emotional distress because she was an unforeseeable plaintiff.

### **Reversed & Remanded - 2023-CA-00393-COA (Sept. 3, 2024)**

En Banc Opinion by Judge Lawrence - Dissent by Presiding Judge Carlton

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

William P. Featherston Jr. for Appellant - Mark C. Carroll for Appellee

Briefed by [Ethan Hayes](#)

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

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

### **HYLAND V. STATE**

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

**POST-CONVICTION RELIEF - PROCEDURE - JURISDICTION** - The Uniform Post-Conviction Collateral Relief Act vests the trial court with exclusive, original jurisdiction to consider a post-conviction-relief motion that collaterally attacks a conviction that was never directly appealed to the Supreme Court

**POST-CONVICTION RELIEF - PROCEDURAL BARS - STATUTE OF LIMITATIONS** - In accordance with Miss. Code Ann. § 99-39-5(2), the Mississippi Uniform Post-Conviction Collateral Relief Act requires a petitioner to request post-conviction relief within three years after the time in which the petitioner's direct appeal is ruled upon by the Supreme Court or, in case no appeal is taken, within three years after the time for taking an appeal from the judgment of conviction or sentence has expired

**POST-CONVICTION RELIEF - PROCEDURAL BARS - SUCCESSIVE MOTIONS** - The Uniform Post-Conviction Collateral Relief Act provides that an order dismissing or denying a post-conviction-relief motion shall be a bar to a second or successive motion

**POST-CONVICTION RELIEF - EXCEPTIONS - FUNDAMENTAL RIGHTS** - There is no fundamental rights exception to either the three-year statute of limitations or the bar to successive motions for post-conviction relief

#### **FACTS**

Henry Hyland Jr. was convicted of drive-by shooting and possession of a firearm by a felon in 2008. Hyland did not appeal these convictions at the time of the ruling. However, in 2012, Hyland filed a motion for post-conviction relief ("PCR"), pursuing an out of time appeal. This motion was denied by the trial court due to the three-year statute of limitations period incorporated in the Uniform Post-Conviction Collateral Relief Act ("UPCCRA"). Hyland proceeded to file a notice of appeal, which was dismissed for failure to pay costs, as well as a motion for rehearing, which was dismissed as untimely. In 2014, Hyland submitted a pro se application to the Supreme Court requesting permission to proceed in the trial court. The Supreme Court dismissed the motion without prejudice, indicating that the matter was to be filed in and ruled upon by the Circuit Court of Warren County. In 2022, Hyland filed another application to the Supreme Court for leave to proceed in the trial court, this time under the guidance of counsel. The motion was once again dismissed with the Supreme Court noting that a defendant who has not appealed his convictions must file a PCR motion as an original action in the trial court. Hyland followed with a second PCR motion in the trial court, asserting that he was entitled to an out-of-time appeal due to ineffective assistance of legal counsel. The trial court dismissed the motion as time-barred and successive. Hyland appealed.

#### **ISSUES**

Whether (1) the trial court lacked jurisdiction over Hyland's PCR motion due to his failure to seek the Supreme Court's permission before proceeding in trial court; (2) Hyland's second PCR motion was time barred and impermissibly successive in accordance with the UPCCRA; and (3) Hyland's claim was subject to the UPCCRA's statute of limitations or successive motions bar considering his alleged violation of his "fundamental rights."

#### **HOLDING**

(1) Because Hyland never directly appealed his convictions or sentences to the Supreme Court, he was not required to seek leave from the Supreme Court before proceeding in trial court. (2) Because Hyland's most recent PCR motion was filed almost fifteen years after the time for taking an appeal from his conviction and sentence had expired, and because it was Hyland's second PCR motion, the motion was doubly barred under the UPCCRA. (3) Because Supreme Court precedent excludes application of a fundamental rights exception to either the successive motions bar or the three-year statute of limitations under the UPCCRA, Hyland's fundamental rights argument was inapplicable. Therefore, the Court of Appeals affirmed the judgment of the Warren County Circuit Court.

**Affirmed - 2023-CA-00256-COA (Sept. 3, 2024)**



Opinion by Presiding Judge Wilson  
Hon. M. James Chaney Jr. (Warren County Circuit Court)  
Cynthia Ann Stewart for Appellant - Alexandra Lebron (Att’y Gen. Office) for Appellee  
Briefed by [Evan Clay](#)  
Edited by [Sarah Schlager](#) & [Emily Phillips](#)

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## MILLER 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: (1) where the Mississippi Supreme Court or the United States Supreme Court has rendered an intervening decision that would adversely affect the outcome of the conviction or sentence; (2) where 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) where the defendant’s sentence has expired or his probation, parole, or conditional release has been unlawfully revoked

**POST-CONVICTION RELIEF - STATUTE OF LIMITATIONS - FUNDAMENTAL RIGHTS EXCEPTION** - Under Mississippi law, there is no fundamental-rights exception to constitutional, substantive enactments of the Legislature

#### FACTS

In 2018, Alphonso Miller pled guilty to being a felon in possession of a firearm and was given a suspended ten-year sentence by the Mississippi Department of Corrections, along with five years of post-release supervision (“PRS”) and five years of unsupervised probation. Four years later, Miller pled guilty to selling methamphetamine, which breached the conditions of his PRS. Consequently, the circuit court revoked his PRS and enforced the ten-year sentence from his 2018 conviction. Miller filed a motion for post-conviction relief, arguing that the overall length of his probation exceeded the maximum of five years and was therefore illegal. The circuit court dismissed this motion because it was filed outside of the three-year statute of limitations of the Uniform Post-Conviction Collateral Relief Act (“UPCCRA”). Miller appealed.

#### ISSUE

Whether Miller’s motion was excepted from the three-year statute of limitations under the UPCCRA due to an alleged violation of his fundamental constitutional rights.

#### HOLDING

Because there was no fundamental rights exception the three-year statute of limitations applicable to post-conviction relief motions, Miller’s claim was barred by the UPCCRA’s statute of limitations. Therefore, the Court of Appeals affirmed the judgment of the Washington County Circuit Court.

#### **Affirmed - 2023-CP-00812-COA (Sept. 3, 2024)**

Opinion by Presiding Judge Wilson  
Hon. Richard A. Smith (Washington County Circuit Court)  
*Pro se* for Appellant - Ashley Lauren Sulser (Att’y Gen. Office) for Appellee  
Briefed by [Regena Rowe](#)  
Edited by [Brandon Peterson](#) & [William Davis](#)

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