

MISSISSIPPI SUPREME COURT DECISIONS – AUGUST 1, 2024**SUPREME COURT - CIVIL CASES****MISS. BAR V. ROGERS****CIVIL - BAR MATTERS**

BAR MATTERS - ATTORNEY DISCIPLINE - BEST-INTEREST PLEA - A best-interest plea, also called an *Alford* plea, allows a defendant to avoid the risk of conviction at trial by pleading guilty without admitting to the actual guilt of the crime charged; for the purposes of attorney discipline, there is no constitutional difference between an *Alford* plea and a traditional guilty plea

BAR MATTERS - FELONY - SUSPENSION & DISBARMENT - Summary disbarment of attorneys is reserved for final convictions under Miss. R. Discipline 6(d), but Miss. R. Discipline 6(a) requires immediate suspension of an attorney who pleads guilty to a felony

FACTS

The Mississippi Bar filed a formal complaint against attorney Guy N. Rogers, Jr. requesting that he be disbarred because he pled guilty to the felony crime of possessing contraband in a jail facility. He was indicted by a grand jury in January 2022 on two counts: conspiracy to commit the felony crime of tampering with physical evidence and the unlawful possession, furnishment, or attempt to furnish contraband to an inmate in the Warren County jail. In November 2023, Rogers signed a best-interest plea of guilty to one count of felony possession of contraband within a jail or correctional facility. The circuit court withheld acceptance of the plea and sentence for thirty-six months pending Rogers's successful completion of supervised probation. After the response deadline to the Mississippi Bar passed, Rogers sought and received permission to file an out-of-time answer. The Mississippi Bar responded with a motion to strike the answer and stated that it did not agree to allow him an extra month to respond.

ISSUES

Whether (1) Miss. R. Discipline 6's summary procedures applied to Rogers's best-interest plea and (2) Rogers could be suspended or disbarred during his probationary period.

HOLDING

(1) Because Rogers entered a best-interest plea which allowed him to plead guilty without admission of actual guilt, Miss. R. Discipline 6's summary procedures applied to Rogers as his entrance of a best-interest plea was also a guilty plea for purposes of attorney discipline. (2) Because Miss. R. Discipline 6 directed an immediate suspension for tendering a guilty plea but reserved summary disbarments for final convictions, Rogers was suspended during the probationary period with the right to seek reinstatement pending successful completion of probation. Therefore, the Supreme Court suspended Rogers from the practice of law and struck his name from the Bar roll.

Suspended from the Practice of Law - 2024-BD-00215-SCT (Aug. 1, 2024)

En Banc Opinion by Justice Maxwell

Adam Bradley Kilgore & Kathryn Addis Littrell for Complainant - *Pro se* for Respondent

Briefed by [James Riley](#)

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

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SUPREME COURT - ORDERS

IN RE: RULES FOR COLLABORATIVE LAW

EN BANC ORDER

ORDER

This en banc Order by the Supreme Court, made in consideration of the Mississippi Bar’s petition to Create Rules for Collaborative Law, ordered that the Mississippi Collaborative Law Rules will become effective on August 26, 2024, and, if a conflict arises between the Mississippi Collaborative Law Rules and the Mississippi Rules of Professional Conduct, the latter shall control. Prior to the petition appearing before the Supreme Court, The Mississippi Board of Bar Commissioners and Bar President formed an Ad Hoc Committee on Collaborative Law to evaluate its feasibility and desirability for the state. After a two-year study, the Committee drafted rules based on the Uniform Collaborative Laws, with adaptations specific to Mississippi, and recommended initially limiting them to family law. The Board unanimously approved these proposed rules, and the Bar subsequently petitioned the Court for their approval.

Exhibit A, referenced and attached to the Order, shows the Mississippi Collaborative Rules to become effective.

Affirmed - 89-R-99044-SCT (July 26, 2024)

En Banc Order by Justice Griffis

Briefed by [Zuri Williams](#)

Edited by [Summie Carlay](#) & [Emily Phillips](#)

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SUPREME COURT - CRIMINAL CASES

WILLIAMS V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - NEW TRIAL - SUFFICIENCY OF TESTIMONY - 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; conflicting testimony is not enough to constitute a verdict being so contrary to the overwhelming weight of the evidence that there would be an injustice in not granting a new trial

EVIDENCE - WITNESSES - CONFLICTING TESTIMONY - When there is conflicting testimony, the jury has the duty to decide the credibility of the witnesses and the weight of their testimony

FACTS

A grand jury indicted Jimmy David Williams on kidnapping and sexual battery. At trial, the victim (“Becky”) testified that Williams stopped her on her way to the bus stop, pointed a gun at her, and told her to get in the backseat of his vehicle. Becky testified that she complied, and Williams drove to nearby driveway and raped her. She also identified Williams as the man she saw the morning of the incident. Several witnesses testified about Becky’s visible distress after the incident. They also testified that Becky had told them that a man raped her. Other witnesses testified about Becky’s medical results, which evidenced that Williams raped her. Williams called as a witness a social worker who met with Becky approximately two weeks after the incident. He testified that Becky told him a group of men raped her as part of a gang initiation. He explained he did not take notes during his meeting with Becky but, instead, made notes immediately after the meeting concluded. He acknowledged it was possible that he could have mistakenly put the gang initiation,

kidnapping, and sexual battery together. Becky denied telling anyone a group of men raped her. She admitted that she discussed the fact that she was born into a gang and her uncle was the gang leader, explaining that the social worker might have misunderstood her. The trial court convicted Williams for sexual battery. Williams filed a motion for a new trial due to conflicting witness testimony, which the trial court denied. Williams appealed.

ISSUE

Whether the trial court abused its discretion in denying Williams’s motion for a new trial.

HOLDING

Because the jury heard all the evidence from both sides and properly judged the credibility of witnesses and the weight of their testimony, the trial court did not abuse its discretion by denying the motion for new trial. Therefore, the Supreme Court affirmed the judgment of the Jackson County Circuit Court.

Affirmed - 2023-KA-00153-SCT (Aug. 1, 2024)

Opinion by Justice Griffis

Hon. Kathy King Jackson (Jackson County Circuit Court)

George T. Holmes & Zakia B. Chamberlain (Pub. Def. Office) for Appellant - Lauren Gabrielle Cantrell & Angel Myers McIlrath (Att’y Gen. Office) for Appellee

Briefed by [Alden Wiygul](#)

Edited by [Brandon Peterson](#) & [Emily Phillips](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – JULY 30, 2024

COURT OF APPEALS - CIVIL CASES

BIVINES V. JOHNSON

CIVIL - PERSONAL INJURY

CIVIL PROCEDURE - DISCOVERY - ADMISSIONS - A trial court has great discretion regarding whether it will take certain matters as admitted; for the trial court to exercise its discretion to permit withdrawal of admissions in proper circumstances, the party seeking to withdraw an admission must first file a motion requesting that relief

CIVIL PROCEDURE - DISCOVERY - WITHDRAWAL - The court may permit withdrawal or amendment of admissions when (1) the presentation of the merits of the action will be subserved thereby, and (2) the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice him in maintaining his action or defense on the merits

FACTS

In September 2020, Clarence Bivines filed a complaint in the County Court of Jackson County against Rebekah Johnson regarding injuries arising from a car accident. Johnson was served with process in October 2020 which included requests for admissions. Bivines sent Johnson two further requests for admissions in November 2020 and January 2021. Johnson failed to answer Bivines’s complaint in a timely manner and did not respond to multiple discovery requests due to an email transmission error with Johnson’s insurance carrier. Johnson’s counsel did not learn of the case until February 2021 due to the email error. At that point, Johnson filed her answer to Bivines’s complaint and later filed a motion for leave to file answers to the requests for admissions in April 2021. Bivines then filed a motion for summary judgment on liability, requesting that the court prohibit any evidence, argument, or cross-examination that contradicted the admissions. The county court granted Johnson’s motion to withdraw admissions and denied Bivines’s motion for summary judgment. At trial in March 2022, the jury returned a verdict in Bivines’s favor for \$12,000 in damages, which exceeded the amount of actual damages. Bivines appealed the county court’s order granting Johnson’s motion and

denying Bivines’s motion, arguing that the admissions would have potentially allowed a punitive damages instruction. The circuit court affirmed the county court’s ruling. Bivines appealed.

ISSUE

Whether the trial court abused its discretion by granting Johnson’s motion to withdraw admissions and for leave to respond to the requests for admissions.

HOLDING

Because Johnson first filed a motion for leave to file answers to the requests for admissions once the email error was discovered, and because Bivines suffered no prejudice by going to trial nearly a year after the withdrawal of admissions, the county court did not abuse its discretion by allowing withdrawal of the admissions and allowing Johnson to file answers to the requests. Therefore, the Court of Appeals affirmed the judgment of the Jackson County Circuit Court.

Affirmed - 2023-CA-00565-COA (July 30, 2024)

Opinion by Judge Emfinger

Hon. Kathy King Jackson (Jackson County Circuit Court)

James (Jay) R. Foster II for Appellant - Thomas Ray Julian for Appellee

Briefed by [Anna Stack](#)

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

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MANOR V. MANOR

CIVIL - DOMESTIC RELATIONS

FAMILY LAW - EQUITABLE DIVISION - FERGUSON FACTORS - Appellate courts look to the chancery court’s application of the *Ferguson* factors when reviewing questions of equitable division, which include: (1) substantial contribution to the accumulation of the property; (2) the degree to which each spouse has expended, withdrawn, or otherwise disposed of marital assets and any prior distribution of such assets by agreement, decree, or otherwise; (3) the market value and the emotional value the assets subject to distribution; (4) the value of assets brought to the marriage by the parties and property acquired by inheritance or inter vivos gift by or to an individual spouse; (5) tax and other economic consequences to third parties, of the proposed distribution; (6) the extent to which property division, may with equity to both parties, be utilized to eliminate periodic payments and other potential sources of future friction between the parties; (7) the needs of the parties for financial security with due regard to the combination of assets, income, and earning capacity; and (8) any other factor which in equity should be considered

FAMILY LAW - EQUITABLE DIVISION - APPEALS - A court will not disturb the factual findings of the chancery court when supported by substantial evidence unless the court can say with reasonable certainty that the chancery court abused its discretion, was manifestly wrong, clearly erroneous, or applied an erroneous legal standard

FAMILY LAW - ATTORNEY’S FEES - MCKEE FACTORS - In assessing attorney’s fees, the court considers the following factors: (1) the relative financial ability of the parties; (2) the skill and standing of the attorney employed; (3) the nature of the case and novelty and difficulty of the questions at issue; (4) the degree of responsibility involved in the management of the cause; (5) the time and labor required; (6) the usual and customary charge in the community; and (7) the preclusion of other employment by the attorney due to acceptance of the case

FACTS

Michael Manor and Pamela Manor married and had three children. For most of the marriage, Michael worked for Rowan Offshore, which required him to be away from home from fourteen to twenty-eight days at a time. Michael admitted that Pamela raised the children and ran the marital household. At the time of divorce, two of the children were past the age of emancipation, with the youngest child turning twenty years old before the trial began. Therefore, child support and custody were eventually not an issue. Michael and Pamela separated and filed a joint complaint of divorce on the ground of irreconcilable differences. Pamela filed an amended counterclaim for divorce and alleged grounds of habitual cruel and inhuman treatment and adultery, asking for custody of the only minor child of the parties and

attorney's fees. On the same day, Pamela also filed a motion for temporary relief. The chancery court granted Pamela custody of the minor child along with child support, alimony, and use and possession of the marital home, but the chancery court denied attorney's fees and set a conference to determine a trial date. Pamela filed a motion for contempt against Michael for failing to pay court-ordered child support and alimony and not paying toward the college expenses of their minor child. The chancery court entered a written order, found Michael in contempt, and ordered him to pay attorney's fees and the unpaid child support, alimony, and college expenses within forty-five days from the date of the order. Michael and Pamela presented the court with a consent of divorce on the grounds of irreconcilable differences pursuant to Miss. Code Ann. § 93-5-2. Additionally, Michael and Pamela agreed the chancery court would decide alimony, an equitable division of all marital assets of the parties and the date of demarcation, determination of who should pay outstanding indebtedness of the parties and if Michael should pay Pamela the unpaid sums from the Temporary Order, which party will have the marital home and which will pay the costs associated therewith, and whether either party shall pay the attorney's fees, costs, and court costs of the other party. At trial, the chancery court conducted a thorough *Ferguson* analysis, made factual determinations based on testimony and supporting documentation, and awarded sixty percent of the marital property to Pamela and forty percent to Michael. The chancery court also considered the *McKee* factors, found that Pamela proved an inability to pay her attorney's fees, and awarded \$7,500 in equitable division to Pamela to cover her attorney's fees. Michael filed post-trial motions that the chancery court denied. Michael appealed.

ISSUES

Whether the chancery court erred in (1) the equitable distribution which awarded sixty percent of the marital property to Pamela and forty percent to Michael and (2) awarding attorney's fees to Pamela.

HOLDING

(1) Because the chancery court applied the *Ferguson* factors and made factual determinations based on the substantial evidence, and because the chancery court was not manifestly wrong in awarding Pamela sixty percent of the marital estate and Michael forty percent, the chancery court did not err in the equitable distribution which awarded sixty percent of the marital property to Pamela and forty percent to Michael. (2) Because the chancery court considered the *McKee* factors and found that Pamela proved an inability to pay her attorney's fees, and because the chancery court did not abuse its discretion in awarding Pamela attorney's fees, the chancery court did not err in awarding attorney's fees to Pamela. Therefore, the Court of Appeals affirmed the judgment of the Lauderdale County Chancery Court.

Affirmed - 2023-CA-00186-COA (July 30, 2024)

Opinion by Judge Lawrence

Hon. Lawrence Primeaux (Lauderdale County Chancery Court)

Kenneth Dustin Markham for Appellant - Kathryn Rae McNair for Appellee

Briefed by [Andrew Grant](#)

Edited by [Mattie Hooker](#) & [Emily Phillips](#)

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MARTIN V. ARCENEAUX

CIVIL - WILLS, TRUSTS, & ESTATES

WILLS & ESTATES - UNDUE INFLUENCE - REBUTTABLE PRESUMPTION - When the circumstances give rise to a presumption of undue influence, the beneficiary has the burden to prove by clear and convincing evidence (1) good faith on the part of the beneficiary, (2) the grantor's full knowledge and deliberation of his actions and their consequences, and (3) advice of a competent person disconnected from the grantee and devoted wholly to the grantor/testator's interest or that the grantor/testator exhibited independent consent and action

WILLS & ESTATES - INTERPRETATION - INTENT - The intention of the testator should be drawn from the language and structure of the will as a whole, giving due weight to every word in the will; the use of different terms

when referring to the same subject matter signals that the testator intended the terms to have different meanings and consequences

WILLS & ESTATES - INTERPRETATION - AMBIGUITY - A will is unambiguous if its terms are plain, taking the whole instrument into consideration; an ambiguity arises only if the terms are susceptible to two reasonable interpretations

WILLS & ESTATES - ANTI-LAPSE STATUTE - INTENT - The anti-lapse statute, Miss. Code Ann. § 91-5-7, does not apply to override the language of a will in which a grantor clearly expresses his or her intent

FACTS

Richard Baker Prichard (“R.B.”) and Martha Prichard had four children, Mark Prichard, Jan Prichard, Lisa Bethea (“Lisa”), and Amy Martin (“Amy”). In 2009, R.B. executed a will in which he devised certain assets to Jan and Mark per stirpes but did not specifically mention any financial accounts. The residuary clause of the will contained language that provided for the distribution of any other assets that may exist at the time of his death to his children “share and share alike.” R.B. moved into an assisted living facility in 2014 due to a decline in his physical health and mental acuity. Later, Amy took her father to Renasant Bank (“Renasant”), where R.B. made Amy a joint owner with rights of survivorship of a certificate of deposit (“CD”) that was previously owned solely by R.B. In March 2015, R.B. transferred the funds from an existing account with Renasant into a new investment account at Ameriprise Financial (“Ameriprise”) with the help of one of Amy’s friends, who was a broker for Ameriprise. For this account, R.B. designated his “living lawful children” as beneficiaries with equal shares of the proceeds at the time of his death, which was a separate and distinct designation from another potential option on the beneficiary designation form that would have named his “lawful children with rights of survivorship per stirpes” as beneficiaries. Mark died in 2015 and was survived by his three children. R.B. died in 2019, and Amy was appointed executrix of his estate. Mark’s children filed a complaint against Jan, Lisa, and Amy, alleging that Amy used undue influence to cause R.B. to add her as a joint owner of the Renasant CD and to choose the option for R.B.’s surviving children to receive a per capita distribution, instead of a distribution per stirpes, from the Ameriprise account. The chancery court found that the two transactions were the product of undue influence and ordered the funds from both accounts to be distributed according to the residuary clause in R.B.’s will. The chancery court interpreted the residuary clause in R.B.’s will to provide for a per stirpes distribution, thus granting relief to Mark’s children. In 2020, Jan died, and his estate was substituted as a party. Jan’s estate, Lisa, and Amy appealed.

ISSUES

Whether (1) the chancery court erred by finding that Amy failed to rebut the presumption of undue influence as to the Renasant CD; (2) the chancery court erred in interpreting the residuary clause of R.B.’s will to provide for a per stirpes distribution rather than a distribution per capita; (3) the anti-lapse statute should override the language of the will; and (4) the chancery court erred by applying a presumption of undue influence to R.B.’s selection of the beneficiaries of his Ameriprise account.

HOLDING

(1) Because Amy took R.B. to the bank alone to modify the ownership of the CD, because she could not provide sufficient proof that R.B. was aware of the value of his assets and of the effect of adding her as a joint owner to the account, and because the chancery court correctly applied the law regarding the “independent consent and action” requirement, the chancery court did not err by finding that Amy failed to rebut the presumption of undue influence with respect to the Renasant CD account. (2) Because the language of the will and the manner in which it was used showed that R.B.’s residuary clause called for a per capita distribution, the chancery court erred by interpreting the residuary clause of R.B.’s will to provide for a per stirpes distribution rather than a distribution per capita. (3) Because R.B.’s will clearly expressed the intent of the testator by using materially different language in different provisions of the will that called for a per capita distribution, and because it was the solemn obligation of the court to carry out the true intent of the testator, the anti-lapse statute did not override the language of R.B.’s will. (4) Because both the residuary clause and the Ameriprise account provided for a per capita distribution, the issue was moot on appeal. Therefore, the Court of Appeals affirmed in part and reversed and rendered in part the judgment of the Prentiss County Chancery Court.

Affirmed in Part; Reversed & Rendered in Part - 2022-CA-01035-COA (July 30, 2024)

En Banc Opinion by Presiding Judge Wilson

Hon. C. Michael Malski (Prentiss County Chancery Court)
Mark Nolan Halbert & Andrew Wayne Coffman for Appellants - John A. Ferrell for Appellees
Briefed by [Mira Radu](#)
Edited by [Katie Shaw](#) & [William Davis](#)

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WEEKS V. WEEKS

CIVIL - DOMESTIC RELATIONS

FAMILY LAW - DIVORCE - ALIMONY - Within its broad discretion, the chancery court has the specific power to increase, decrease, or terminate periodic alimony payments

CIVIL PROCEDURE - CHANCERY COURT - EVALUATING EVIDENCE - The chancery court is tasked with the duty of evaluating the evidence and the credibility of the witnesses

EVIDENCE - CONTENT OF DOCUMENT - ORIGINAL DOCUMENT - Miss. R. Evid. 1002 states that to prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided by law

FAMILY LAW - ALIMONY - RETROACTIVE MODIFICATION - A chancery court has the authority to order the downward modification of alimony retroactive to the filing of the petition to modify

FACTS

Since 2001, Roland Weeks and Deborah W. Weeks have been involved in ongoing litigation over financial aspects of their divorce. In 2002, the Court of Appeals upheld the chancery court's division of assets but remanded the case to award periodic alimony to Deborah and to consider whether Roland should pay for Deborah's medical insurance as part of the alimony. The Court of Appeals also instructed the chancery court to determine whether Deborah was entitled to attorney's fees using specific factors. In 2009, the Court of Appeals affirmed in part and reversed in part the chancery court's judgment, remanding once again for reconsideration of child support and attorney's fees. In 2016, the Court affirmed the denial of Roland's motion to modify alimony and Deborah's request for accumulated attorney's fees but reversed and remanded to award interest on child support arrearages. Years later in 2020, Roland filed a motion seeking to modify the divorce judgment, citing reduced retirement benefits due to his employer's bankruptcy and a significant reduction in his income. Roland argued that these changes justified eliminating alimony payments, including life insurance premiums. Deborah contested Roland's claims, arguing that he failed to prove his inability to pay alimony and life insurance and seeking his tax returns from the Internal Revenue Service ("IRS"). The chancery court entered an order, requiring Roland to provide tax returns from either their certified public accountant ("CPA"), the IRS, or the Mississippi Department of Revenue. However, Roland submitted a summary tax transcript from the IRS rather than the actual signed and IRS-filed returns. Despite a temporary reduction in alimony payments, the court found Roland in contempt for not producing adequate financial evidence and failing to pay insurance premiums and attorney's fees. The chancery court denied Roland's motion to eliminate alimony, finding that he failed to produce evidence of a significant and unexpected reduction in income. The chancery court reinstated the original alimony payments and awarded back alimony to Deborah. Roland appealed.

ISSUES

Whether the chancery court erred in (1) denying Roland's request for a reduction in alimony to Deborah and (2) ordering Roland to pay retroactive alimony.

HOLDING

(1) Because Deborah expressed concern that Roland and his CPA did not provide accurate representations of what was filed with the IRS, the chancery court acted within its discretion to determine that what Roland presented did not support the reduction in alimony. (2) Because Roland failed to provide evidence that the chancery court erred in awarding Deborah the retroactive alimony payments, and because the chancery court had the authority to order the downward modification of alimony retroactive to the filing of the petition to modify, the chancery court did not err in

ordering Roland to pay retroactive alimony. Therefore, the Court of Appeals affirmed the judgment of the Harrison County Chancery Court.

Affirmed - 2023-CA-00427-COA (July 30, 2024)

Opinion by Chief Judge Barnes

Hon. H. David Clark II (Harrison County Chancery Court, First Judicial Dist.)

Henry Laird for Appellant - *Pro se* for Appellee

Briefed by [Senneca Evans](#)

Edited by [Sarah Schlager](#) & [Emily Phillips](#)

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COURT OF APPEALS - POST-CONVICTION RELIEF

BATES V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - STATUTE OF LIMITATIONS - SUBSEQUENT MOTIONS - Pursuant to Miss. Code Ann. § 99-39-5(2)(a)-(b), 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 revoked

POST-CONVICTION RELIEF - PETITION - MERIT - When the trial court reviews a petition for post-conviction relief, the trial court has an obligation to review the original motion, together with all the files, records, transcripts and correspondence relating to the judgment under attack to determine whether the defendant has proven the merit of the allegations by a preponderance of the evidence

FACTS

In 1990, Earl Bates pled guilty to the charge of carrying a concealed weapon by a felon. The circuit court sentenced him to one year in the custody of the Mississippi Department of Corrections, with the sentence suspended on two years good behavior. In 2019, Bates filed a motion for post-conviction relief (“PCR”), challenging the 1990 conviction for failure to prove a factual basis for the charge, an insufficient indictment, an illegal sentence, and ineffective assistance of counsel. The circuit court dismissed the motion with prejudice for failure to state a claim and failure to timely file, and Bates appealed. The circuit court’s decision was affirmed by the Court of Appeals in 2021. In 2022, Bates filed another PCR motion raising the same issues as his 2019 PCR motion. The circuit court dismissed the motion on the basis that Bates’s claim had no merit and that the motion was barred as successive. Bates appealed.

ISSUES

Whether (1) the circuit court erred in barring the motion as successive and (2) Bates’s suspended sentence was illegal.

HOLDING

(1) Because none of Bates’s claims fell within any exceptions to the successive motions bar, the circuit court’s denial of Bates’s second PCR motion was proper. (2) Because the issue of Bates’s suspended sentence was barred by res judicata, the issue was without merit. Therefore, the Court of Appeals affirmed the judgment of the Pike County Circuit Court.

Affirmed - 2023-CP-00356-COA (July 30, 2024)

Opinion by Chief Judge Barnes

Hon. David H. Strong Jr. (Pike County Circuit Court)

Pro se for Appellant - Abbie Eason Koonce (Att’y Gen. Office) for Appellee

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

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COURT OF APPEALS - CRIMINAL CASES

GIPSON V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - JURY SELECTION - BURDEN OF PROOF - A defendant bears the burden of showing he was prejudiced by the jury selected or that the jury was biased or less than impartial

CRIMINAL PROCEDURE - APPEALS - PRESERVING AN ISSUE FOR APPEAL - A defendant may fail to preserve an issue for appeal if he makes no contemporaneous objection at trial

CRIMINAL PROCEDURE - JUROR MISCONDUCT - COURT INVESTIGATION - When an allegation of juror misconduct arises, the circuit court must first determine whether there is good cause to warrant further investigation by the court; in order for the duty to investigate to arise, the party contending there is misconduct must make an adequate showing to overcome the presumption of jury impartiality; after a party presents a threshold showing of good cause that a jury may have been exposed to improper outside information, *Gladney* indicates that the trial court should conduct a post-trial investigative hearing

CRIMINAL PROCEDURE - QUESTIONING OF JURY - INTERNAL DELIBERATIONS - Miss. R. Evid. 606 does not permit any inquiry into the internal deliberations of the jurors

FACTS

A grand jury indicted Quardero Gipson and Quincy Scott for one count of conspiracy to commit armed robbery and one count of capital murder. As part of a plea deal, Scott agreed to testify against Gipson at Gipson's trial. At two different points during Gipson's trial, the State brought the potential for juror bias to the court's attention. The State stated it had potential information that Juror 149 might share a child with Scott's uncle. Juror 149 stated that she did not know Scott, and Gipson's attorney made no objection to Juror 149 remaining on the jury. At a later point in the trial, the State informed the court that Juror 92 was previously in a relationship with Gipson. Juror 92 stated that she did not know Gipson personally, and Gipson's attorney asked that she stay on the jury. During jury deliberations, the jurors asked the bailiff a question to which he responded. He then informed the circuit court of the interaction. The circuit court questioned the bailiff, and he explained that the jury asked him what would happen if they were unable to reach a decision. The bailiff responded that, normally, it would be a hung jury. The jury then informed the bailiff that had reached a verdict as to Count I but not as to Count II. The bailiff then told the jury that they had to come to some type of decision. The defense raised concerns about the bailiff's interaction with the jury, so the circuit court further examined the bailiff to ascertain exactly what he said to the jury. Although the bailiff previously testified that he told the jury that they had to come to some type of decision, he clarified that he did not tell them that they had to reach a verdict. The jury convicted Gipson of one count of conspiracy and one count of first-degree murder. After the circuit court dismissed the jury, Gipson's attorney moved for a mistrial based on the bailiff's involvement with the jury. The circuit court cleared the courtroom of everyone but the parties and brought the jury back in. The circuit court explained that it had one question pertaining to the verdicts and an interaction that the jury had with the bailiff during the deliberation process. The court then asked whether there was anything pertaining to the interaction with the jury when the bailiff visited the jury room that changed their decision. Each juror answered in the negative and affirmed that their verdicts were unanimous. The circuit court concluded that the verdicts were not the result of any interaction between the bailiff and the jury. Gipson appealed.

ISSUES

Whether the circuit court erred by failing to grant a new trial due to (1) juror bias and (2) an improper external influence on the jury.

HOLDING

(1) Because Gipson failed to object to the sufficiency of the circuit court's voir dire of either Juror 149 or Juror 92, and because Gipson failed to meet his evidentiary burden, the circuit court did not err by failing to grant a new trial due to juror bias. (2) Because the circuit court conducted a thorough investigative hearing, the circuit court did not err by failing to grant a new trial due to an improper external influence even though the circuit court erroneously concluded with the additional question about whether the bailiff's statements to the jurors influenced their decision to find Gipson guilty. Therefore, the Court of Appeals affirmed the judgment of the Tallahatchie County Circuit Court.

Affirmed - 2022-KA-01305-COA (July 30, 2024)

Opinion by Judge Smith

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

W. Daniel Hinchcliff (Pub. Def. Office) for Appellant - Casey Bonner Farmer (Att'y Gen. Office) for Appellee

Briefed by [Kyra Childress](#)

Edited by [Brandon Peterson](#) & [Emily Phillips](#)

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NOBLES 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

Lonnie Nobles was indicted in Forrest County for the sale of methamphetamine and charged as a habitual offender based upon previous grand larceny and armed robbery felony convictions. Following testimony from law enforcement and a forensic scientist at the Mississippi Forensic Laboratory, Nobles was found guilty. Following the sentencing hearing, the circuit court found Nobles a habitual offender beyond a reasonable doubt, and Nobles was therefore ordered to serve a life sentence without parole. Nobles appealed.

ISSUE

Whether there were any arguable issues on appeal to overturn Nobles's sentence as a habitual offender.

HOLDING

Because the defense counsel raised no actionable issues on appeal through an appellate brief in compliance with *Lindsey v. State*, because Nobles never filed the granted supplemental pro se brief, and because the Court of Appeals found no arguable issues for appeal after a thorough review of the record, there was legally sufficient evidence to uphold Nobles's sentence as a habitual offender. Therefore, the Court of Appeals affirmed the judgment of the Forrest County Circuit Court.

Affirmed - 2023-KA-00671-COA (July 30, 2024)

Opinion by Judge McCarty

Hon. Robert B. Helfrich (Forrest County Circuit Court)

George T. Holmes (Pub. Def. Office) for Appellant - Lauren Gabrielle Cantrell (Att'y Gen. Office) for Appellee

Briefed by [Grant Hughes](#)

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

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SHIPP V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - NEW TRIAL - SUFFICIENCY OF EVIDENCE - When viewing the evidence in the light most favorable to the state, a rational juror must be able to find beyond a reasonable doubt that the State proved its position

CRIMINAL PROCEDURE - JURY INSTRUCTION - THEORY OF CASE - Reversible error is not present if the jury instruction fairly covers the law in question

FACTS

Travis Love and Justin Jones were gambling at a mutual friend's home when they met Deadrick Williams, Willie Austin, and Michael Shipp. Williams approached Love and Jones and invited them to come back to his apartment and continue gambling. Upon arriving at Williams's apartment, Love and Jones gambled the others out of hundreds of dollars. Love then saw Shipp whisper to Williams, who nodded in reply and walked to another room. As Love and Jones began to leave, Williams emerged brandishing a handgun. Once Williams appeared, Shipp moved to block the doorway and prevent Love and Jones from leaving. At Williams's instruction, Shipp removed Love's handgun and aimed it toward Love. After handing over all their money, Love tapped Jones on the shoulder and said they should leave. Shipp then shot Love in the chest, severely wounding him. A fight ensued, during which Love heard Shipp state he was going to kill him. Shipp fired another shot that killed Jones. Eventually, everyone fled the scene and Shipp was apprehended after a car chase. The state indicted Shipp for conspiracy to commit murder, attempted murder, and capital murder. During trial, the court denied Shipp's proposed jury instruction on duress in favor of the State's instruction on duress. A jury found Shipp guilty on all counts. Shipp appealed.

ISSUES

Whether (1) there was insufficient evidence to convict Shipp of conspiracy to commit murder and (2) the trial court erred in denying Shipp's proposed jury instruction on duress.

HOLDING

(1) Because, when viewing the evidence in the light most favorable to the State, a rational juror could have found beyond a reasonable doubt that the State proved Shipp and Williams entered into an agreement to murder Jones, no reversible error was present. (2) Because the State's instruction fairly covered the law regarding duress, the trial court was within its discretion to refuse Shipp's instruction. Therefore, the Court of Appeals affirmed the judgment of the DeSoto County Circuit Court.

Affirmed - 2023-KA-00655-COA (July 30, 2024)

Opinion by Judge Westbrook

Hon. Celeste Embrey Wilson (DeSoto County Circuit Court)

Justin Taylor Cook (Pub. Def. Office) for Appellant - Barbara Wakeland Byrd (Att'y Gen. Office) for Appellee

Briefed by [Kennedy Guest](#)

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

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