MISSISSIPPI SUPREME COURT UPDATE

2010 Spring Public Defenders Training Conference
October 15, 2009 to April 8, 2010

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Death Penalty Cases 1

Doss v. State (PCR) 1

Non-Death Penalty Criminal Cases 3

Abernathy v. State 16
Barfield (Jonathan) v. State 9
Barnes v. State 18
Deeds v. State 10
Densmore v. State 8
Evans v. State 14
Hudson (Vincent) v. State 23
Jay v. State 5
Johnson (Joey) v. State 13
McClellan v. State 21
McDowell v. State 7
Parker v. State 19
Pruitt v. State 15
Smith (Kenivel) v. State 6
Tate v. State 3
Williams (Nickey) v. State 24

SCT Post-Conviction Cases 26

Jackson (Robert) v. State 27
Walters v. State 26

U.S. Supreme Court Notes 29
Alvarez v. Smith 31
Beard v. Kindler 31
Berghuis v. Smith 37
Bloate v. United States 36
Briscoe v. Virginia 34
Corcoran v. Levenhagen 29

Florida v. Powell 35
Johnson v. United States 36
Kucana v. Holder 33
Maryland v. Shatzer 36
McDaniel v. Brown 32
Michigan v. Fisher 31
Padilla v. Kentucky 37
Porter v. McCollum 30
Presley v. Georgia 33
Smith v. Spisak 32
Thaler v. Haynes 35
Wellons v. Hall 32
Wilkins v. Gaddy 34
Wong v. Belmontes 30
Wood v. Allen 34

Direct appeal decisions by date - non death penalty cases:

October 29, 2009 3
November 5, 2009 6
November 12, 2009 7
November 19, 2009 8
December 3, 2009 9
December 17, 2009 12
January 21, 2010 14
January 28, 2010 15
March 4, 2010 16
March 25, 2010 19
April 1, 2010 24

MISSISSIPPI COURT OF APPEALS UPDATE
2010 Spring Training Conference
October 13, 2009 to April 6, 2010

Direct Appeal Cases 39

Anderson v. State 82
Anthony v. State 89
Banks v. State 125
Baskin v. State 104
Blakeney v. State 86
Bond v. State 127
Brown (Patricia) v. State 92
Brunner v. State 57
Buckley v. State 50
Camper v. State 106
Catchings (Cedric) v. State 54
Chatman v. State 138
Clay v. State 43
Coleman v. State 143
Collins v. State 149
Cummings v. State 144
David v. State 146
Dubose v. State 62
Drummer v. State 95
Drummond v. State 51
Field v. State 129
Flowers v. State 64
Fluker v. State 134
Glenn v. State 102
Gore v. State 77
Graves v. State 139
Green v. State 106
Henry v. State 116
Hill v. State 94
Hudson (Gregory) v. State 88
Jackson (Willie) v. State 69
Johnson (John) 58
Jones v. State 39
Kendrick v. State 66
Keys v. State 41
Kirkwood v. State 114
Lindsey v. State 137
Logan v. State 126
Lynch v. State 100
Madden v. State 101

Martin v. State 148
Maye v. State 70
Mayers v. State 131
McBride v. State 109
McInnis v. State 123
McLaurin (I) v. State 67
Moses v. State 142
Moten v. State 53
Murray v. State 40
Neal v. State 65
Owen v. State 107
Payton v. State 84
Perkins v. State 84
Peterson v. State 117
Pilgrim v. State 44
Pritchett v. State 156
Renfrow v. State 60
Robinson (Billy) v. State 157
Robinson (Jermain) v. State 48
Robinson (Latoya) v. State 99
Robinson (Willie) v. State 136
Ross v. State 78
Rutland v. State 122
Sanders (Keir) v. State 149
Sanders (Robert) v. State 49
Shelley v. State 141
Shelton v. State 152
Shorter v. State 72
Sistrunk v. State 154
Smith (Leander) v. State 119
Spearman v. State 147
Tanner v. State 56
Timmons v. State 112
Trevillion v. State 76
Tucker v. State 74
Welch v. State 47
Williams (Bridgit) v. State 90
Williams (David) v. State 96
Williams (Harvey) v. State 110
Williams (James) v. State 83
Williams (Nolan) v. State 130
Williams (Quintin) v. State 120
Woods v. State 45

COA Post-Conviction Cases 158

Agent v. State 192
Aguirre v. State 180
Amerson v. State 175
Bailey v. State 159
Burks v. State 182
Byrne v. State 199
Cathings v. State 184
Chandler v. State 179
Cherry v. State 177
Dickerson v. State 172
Diggs v. State 188
Elliott v. State 162
Glass v. State 197
Graham v. State 195
Holloway v. State 203
Hooks v. State 174
Ivy v. State 169
Johnson (Alex) v. State) 198
Johnson (Sammie) v. State) 205
Joiner v. State 186
Jordan v. State 166
Kiker v. State 170
Lattimore v. State 190
McLaurin (II) v. State 185
Mitchener v. State 164
Morris v. State 191
Payne v. State 173
Phillips v. State 181
Robert v. State 161
Scott v. State 176
Smith (Terrance) v. State 193
Smith (Willie) 167
Taylor v. State 194
Varnado v. State 204
Walker v. State 201
Wardley v. State 200
Whitaker v. State 165
White v. State 171
Williams (Jason) v. State 187
Young v. State 158

Direct appeals opinions by dates:

October 13, 2009 39
October 20, 2009 45
October 27, 2009 51

November 3, 2009 53
November 10, 2009 60
November 17, 2009 66
November 24, 2009 72
December 1, 2009 77
December 8, 2009 86
December 15, 2009 89
January 5, 2010 99
January 12, 2010 109
January 19, 2010 110
January 26, 2010 112
February 9, 2010 114
February 16, 2010 119
February 23, 2010 124
March 2, 2010 141
March 9, 2010 148
March 16, 2010 152
March 30, 2010 154
April 6, 2010 157

INDEX OF ISSUES

Appeals

Williams (Bridgit) **(although amended JNOV filed months late b/c def fled, court considered the appeal for the sake of judicial economy). 90**
Fluker **(no error denying def to modify record on appeal from justice court to circuit court - info outside the record). 134**

Arguments

Tate **(no impermissible comment on right to remain silent by commenting that it was "her word against his"). 3**
Catchings **(comments were not improper and did not invite jury to "send a message"). 54**
Tucker **(no error implying def involved in burglary in trial where def charged w/ receiving stolen property). 74**
Banks **(no error to argue def had no defense - was not a comment on his failure to testify). 125**
Robinson (Willie) **(reversible error to comment on prior conviction as evidence of intent to steal - prior was only evidence presented on intent). 136**
Shelley **(prosecution argued there was drug problem in county and up to jury to clean it up - clearly improper, but no obj - harmless error). 141**

Batson **Issues**

Haynes **(a trial judge need not personally observe a prospective juror's demeanor during voir dire to accept a prosecutor's explanation for a peremptory challenge). 35**
Murray **(state struck unemployed juror and juror related to another pending def - sufficient race neutral reasons). 40**
Dubose **(record did not show racial make-up of jury - reason for all strikes found to be race neutral). 62**
Camper **(def failed to provide racial make up of jury - state's reason race neutral - reasons included jurors were disinterested, lived in drug area, body language, and looked sleepy).. . . . . 105**
Shelley **(long hair and earring valid race neutral reason for strike). 141**

Burglary

Kirkwood **(victim lived in trailer occasionally - sufficient to establish that trailer was a "dwelling"). 114**

Chain of custody

Renfrow **(Def failed to show issue simply b/c several people had access to where**

hard drive secured). 60
Shelton **(no requirement to produce every person who handled evidence). 152**

Character Evidence

Williams (Nickey) **(no error limiting def character witnesses not disclosed in discovery). 24**

Victim's character

Williams (Harvey) **(no error excluding evidence of violence character of victim - def attempted to admit this during state's case - did not renew attempt during def case when it would have been allowed) 110**

Child Abuse

Henry **(felony child abuse statute requiring "serious bodily injury" not overly broad - claimed bruising of skin not serious injury - COA would not overrule prior case law).. . . . . 116**

Competency

Jay **(judge erred in failing to hold competency hearing). 5**
Parker **(def's competency at the time of the crime would require an insanity defense and not a competency hearing at trial - def failed to allege any facts to show that the court had reasonable grounds to order a competency hearing). 19**
Taylor **(PCR - no error in failing to hold prior to plea - no mention of competency and no evidence of incompetency offered). 194**

Confessions/Statements

Powell **(USSCT declined to declare a precise formulation required by *Miranda* and found that different words used to advise def of his rights were sufficient b/c they communicated the same message). 35**
Barnes **(def failed to make unequivocal request for counsel). 18**
McClellan **(def's statements admissible - made after arrest and rights warnings). . 21**
Murray **(def claimed officer told her it was in her best interest to confess - judge found no promises were made - statement admissible). 40**
Renfrow **(Def not enticed to go to sheriff's office or enticed to give statement). 60**
Blakeney **(no error admitting video statement of def w/o rights warning - def not in custody).. . . . . 86**

Confrontation rights

Briscoe (affidavits such as forensic analysis certificates are testimonial statements under *Crawford*). 34
Deeds (rights not violated by admission of blood test w/o testimony of nurse who drew blood - she was not a witness against def). 10
Shorter (Def's wife's 911 call was not testimonial and did not violation confrontation clause). 72
Ross (no confrontation violations in the limitation of the cross of several witnesses - one issue error but harmless as witness testified to same in prior trial of def). 78
Anthony (no error admitting medical records - report not testimonial but made for the treatment of a child - confrontation violations can be harmless error). 89
Owen (error allowing unsworn statement of inmate who was declared unavailable for medical reasons - however error deemed harmless as cumulative to other evidence). 107
Timmons (no error in limiting cross of statutory rape victim about statements she made to investigators the def involved with other girls - information speculative - no objection as to confrontation rights at trial, so issue reviewed as plain error).. 112

Continuances

Densmore (judge erred in failing to grant continuance when state's main witness - CI in drug deal - only disclosed on day of trial). 8
Jones (no error denying continuance on day of trial when new atty entered appearance). 39
Pilgrim (counsel claimed he was not prepared - def failed to show prejudice - also no error in denying continuance on late discovery of exculpatory evidence - evidence (lack of fingerprints) not inconsistent w/ guilt).. 44
Renfrow (Def failed to show to what might have been discovered by def expert on computer hard drive if given continuance). 60
Williams (Harvey)(no error in denying continuance in order to find two witness - def failed to give reason why they could not find them in past year). 110
Coleman (No error denying continuance b/c counsel only given one extra day to research new felony murder charge - evidence the same as original murder charge).. 143

Cross Examination/Impeachment

McClellan (no error ruling prior burglary conviction could be used as impeachment if precursors def testified - def failed to make proffer of testimony). 21
Robinson (Jermain) (def not denied opportunity to impeach - court required proper foundation and then allowed re-call of witness - no error). 48
Catchings (harmless error for judge to restrict cross of witness on prior convictions given weight of evidence).. 54

McLaurin (I) (no error prohibiting questions to rape victim about facts not in evidence). 67
Ross (most of issues restricted on cross were about prior convictions remote in time - harmless error in limiting cross of Dr. Hayne).. 78
Williams (Harvey)(no error allowing state to impeach def witness w/ a videotape from the "Pimp and Ho" ball -implying witness would do anything def asked of her). 110
Timmons (no error in limiting cross of statutory rape victim about statements she made to investigators the def involved with other girls - information speculative). 112
Banks (error not to allow cross of def's mother on hearsay that victim hated def - harmless though b/c of weight of the evidence).. 125

Cumulative Error

Parker (no cumulative error). 19
Catchings (given overwhelming weight of evidence, no prejudice). 54

Depraved Heart Murder

Johnson (John) (def's actions did not rise to level of depraved heart - were the actions of one acting rashly out of heat of passion w/ a mistaken claim of self-def). 58

Discovery

Densmore (judge erred in failing to grant continuance when state's main witness - CI in drug deal - only disclosed on day of trial). 8
Williams (Nickey) (no error limiting def character witnesses not disclosed in discovery). 24
Williams (Harvey) (no error limiting def witness to summary provided when State given only 5 day notice - even if error, it was harmless given weight of evidence). 110
Sistrunk (def claimed unfairly surprised by state's expert - however def failed to obj - issue barred). 154

Double Jeopardy

Deeds (jeopardy did not apply in city court where DUI dismissed - def never placed in legal jeopardy - no error in subsequent indictment). 10
Parker (capital murder and possession of a weapon on educational property do not contain the same elements). 19
Bailey (no double jeopardy because case submitted twice to grand jury). 159

DUI/Felony DUI/DUI Homicide

Evans (error not to allow expert to testify on alcohol consumption in DUI per se case - def attempting to show BAC was not over the legal limit at time of stop, not attempting to show def not intoxicated). 14

Evidence

Tate (no error allowing evidence def in sexual battery case may have attempted suicide twice).. 3
Deeds (admissibility of evidence governed by rule, not statute). 10
Renfrow (AG cyber crime unit procedures sufficient to protect computer evidence in child porn case). 60
Baskin (no error in refusing to suppress video of drug sale - co-indictee fled and could not be crossed - no statements on tape used against def). 104
Smith(Leander) (no error when witness answered def question that she was sure it was def who robbed store b/c she saw a video - State had agreed not to admit video - evidence elicited by def - no error). 119
Field (no error refusing to inform jury that first jury was hung on charge). 129
Moses (def claimed inadmissible evidence but def either opened door to such evidence or failed to obj). 142
David (evidence that def told victim's wife family had given him trouble and he would not forget it was admissible to show state of mind).. 146
Sistrunk (def failed to obj to admission of statement which mentioned def's involvement for several yrs w/ drugs - even though court granted motion in limine, counsel must obj).. 154

Expert Testimony/Witnesses

Evans (error not to allow expert to testify on alcohol consumption in DUI per se case - def attempting to show BAC was not over the legal limit at time of stop, not attempting to show def not intoxicated). 14
Abernathy (no error in failing to allow expert on migraines to testify to discredit sexual battery victim who stated she had migraines - def failed to make proper proffer). 16
Maye (no error allowing Dr. Hayne to testify to hypothetical questions - Hayne testified truthfully about his qualifications - admitted as expert w/o obj) 70
Ross (no error in excluded def expert - much of testimony covered by state witnesses). 78
Williams (David) (no error allowing Dr. Hayne to testify as expert - Hayne and another dr disagreed on methodology and conclusions - other dr did not invalidate Hayne). 96

Qualification of

Evans (error for COA to rule on qualification of expert when trial judge failed to do so). 14

Keys (no error allowing Dr. Hayne to testify as expert in ballistics - ballistics is a sub-field of pathology - def did not obj). 41

Ex Post Facto

Neal (no error resentencing def to life w/o parole for 1982 murder - statute allowing life w/o enacted in 1977 - no ex post facto violation). 65
Mayers (plain error to use sentence enhancements passed after crime committed) 131
Holloway (25% law not retroactive - even if so, it would only benefit def). 203

Forfeitures

Alvarez (When actual property in dispute has been returned, whether or not state provided speedy opportunity to be heard is moot). 31

Guilty Pleas

Padilla (as a matter of federal law, counsel must properly inform a non-citizen client when a plea carries a risk of deportation - deportation is an integral part of the penalty that may be imposed). 37
Bailey (plea not involuntary because jail had no air conditioning).. 159
Elliott (not induced to plea b/c of pain medication - judge not required to inform sex offender of registration requirements). 162
Mitchener (plea voluntary - claimed atty misrepresented sentence). 164
Jordan (plea voluntary- claimed atty coerced him). 166
Smith (Willie)(claimed plea coerced b/c he did not know he was to be charged as habitual - record did not support this).. 167
Ivy (sufficient factual basis for plea to sexual battery). 169
Dickerson (plea voluntary - def failed to notify court of any mental problems). . . 172
Hooks (plea not involuntary b/c def believed sex w/ minor permissible if minor misled him about her age). 174
Cherry (sufficient factual basis for plea to armed robbery - voluntary - as a matter of law, BB gun is a deadly weapon - not required to inform def as to right to appeal).. 177
Phillips (def knew court not bound by plea offer - plea waived sufficiency of evidence claim). 181
Williams (Jason) (properly advised of his rights he was waiving at plea - understood crimes - factual basis for plea). 187
Diggs (plea waived presentation of evidence - no error in failing to inform def he could appeal illegal sentence - failed to show sentence illegal - factual basis for plea as accessory). 188
Morris (plea voluntary - if court erred in not stating on the record the max possible sentence, error harmless). 191
Taylor(plea voluntary). 194
Graham (no error in failing to advise def he could appeal sentence - plea

voluntary - plea waived any defects in indictment). 195

Habitual Offenders

Johnson (Joey) (§99-19-81's mandatory sentencing not unconstitutional - issue barred for failing to obj at sentencing). 13
Williams (James) (State failed to prove 2 prior convictions). 83
Williams (Bridgit) (does not matter that prior were to be serviced concurrently - def sentenced to two separate sentences). 90
Peterson (no error amending indictment to correct sentencing date immediately before sentencing). 117
Phillips (sentence may have been too lenient, but did not address issue since state did not raise issue). 181
Byrne (PCR - properly sentenced as habitual even though sentenced to a workhouse in Tennessee).. 199

Hearsay

Smith (prior inconsistent statement of testifying witness not hearsay, but was admissible under MRE 801(d)(1)© as statement of identification).. 6
Pilgrim (no error allowing hearsay testimony that no fingerprints found on bag - reversible error cannot be found in the admission of exculpatory evidence). 44
Williams (Nickey) (no error admitting hearsay from witness who talked to child victims under tender years exception). 24
Drummond (hearsay issue barred for failing to obj). 51
Flowers (no error excluding self-serving statement def made to police as hearsay). 64
Anthony (no error admitting medical report in child abuse case which cited abuse and neglect - admissible as business record and statement made for medical treatment). 89
Williams (Harvey)(no error refusing to allow def to cross witness about audio tape - properly excluded as hearsay). 110

House Arrest/ISP

Graham (sentence was self-executing - if def competed house arrest, the remaining sentence would be suspended). 195

Identification Evidence

Smith (prior inconsistent statement of testifying witness not hearsay, but was admissible under MRE 801(d)(1)© as statement of identification).. 6
McLaurin (I) (line-up not impermissibly suggestive - def failed to make line-up part of the record - issue not preserved). 67
Owen (no error allowing suggestive show-up).. 107
Williams (Quintin) (no error failing to suppress pre-trial photo line-up).. 120

Indictments

Jackson (Robert) (indictment fatally defective for failing to alleging underlying crime to burglary and further, in failing to allege crime w/o authority of law). 27
Ivy (PCR - failure to cite statute number is non-jurisdictional - guilty plea waived issue). 169
Joiner (PCR - indictment not defective - guilty plea waived issue). 186

Aggravated Assault

Mayers (agg ass of LEO indictment sufficient even though it did not allege a deadly weapon - stating that def used a gun was sufficient) 131

Amendments to

Tanner (def obj to dates of indictment for sexual battery, but later offered language adopted by court - no error). 56
Payton (correcting appropriate statute number was amendment as to form, not substance). 84
Peterson (no error amending habitual offender indictment to correct sentencing date immediately before sentencing). 117
Smith (Willie) (PCR - amendment to show habitual status after guilty plea proper - clerical errors harmless). 167

Attempts

Spearman (indictment not fatal for failing to list attempt in attempted burglary case). 147

Possession of controlled substance

Brown (def failed to allege how indictment failed to put her on notice - no obj at trial - showed no prejudice). 92

Possession/Receiving Stolen Property

Tucker (indictment sufficient to show items alleged to have been stolen). . . 74

Simple Assault on LEO

Moten (indictment sufficiently informed def of charge - no prejudice). 53

Ineffective Assistance of Counsel

Doss (DP case - court found IAC in failure to explore mitigating evidence). 1
Parker (failure of counsel to make post-trial motions was error, but no prejudice). 19
Belmontes (not IAC to carefully present mitigation evidence to avoid the State introducing additional aggravators in rebuttal). 30
Porter (def showed prejudice in counsel's failure to present substantial mitigation). 30
Wood (counsel made a strategic decision to not investigate and present evidence on def's low mental faculties). 34
Johnson (Joey) (IAC claims better left for PCR). 13
Buckley (claimed counsel failed to argue insanity and failed to peremptorily challenge sheriff's wife - no proof of insanity and challenges strategic). . . . 50
Drummond (issue better left for PCR). 51
McLaurin (I) (23 instances of alleged IAC better left to PCR). 67
Tucker (record not adequate - can pursue on PCR). 74
Perkins (record not conclusive concerning failure to submit instruction on theory of the case issue preserved for PCR). 84
Williams (David). 96
Robinson (Latoya) (no IAC for failing to request self-def instruction - could be strategy - can pursue on PCR). 99
Williams (Harvey) (no IAC for causing limited cross on witness provided to state after late discovery). 110
Henry (no IAC b/c atty took inactive status a month before def's trial). 116
Fluker (DUI case - better left for PCR). 134
Coleman (def claimed IAC b/c counsel only given one day continuance to research new felony murder charge - evidence the same as original murder charge). 143
Martin (def failed to show atty's performance prejudiced his case). 148
Sistrunk (issue could not be determined from record - can try on PCR). 154
Young (PCR - no IAC - many claims, including failure to prepare and call certain witness and failure to convey plea offer). 158
Bailey (PCR - def cited no specific instances of IAC). 159
Robert (PCR - claimed atty failed to subpoena, call or examine witnesses, failed to send bullets to lab, and failed to prepare and investigate - no prejudice) 161
Elliott (PCR - def stated he was satisfied w/ atty). 162
Mitchener (PCR - def claimed atty misrepresented sentence -no prejudice shown). 164
Whitaker (PCR - claimed atty failed to tell him he had to register as sex offender - however, def had other probation violations). 165
Jordan (PCR - def presented no evidence of counsel unpreparedness). 166
Ivy (PCR - record shows no deficiency). 169
Kiker (PCR - claimed conflict of interest as trial atty represented witness against him - However, def's second atty had no conflict - second atty handled most of trial). 170
White (PCR - no deficiency shown). 171
Dickerson (PCR - record showed def properly advised of possible sentence). 172
Cherry (PCR - claims in direct contradiction of sworn testimony). 177
Phillips (PCR - def provided no proof to support his many claims against his atty

- at his plea, def stated he was satisfied w/ atty). 181
Joiner (PCR - no error for atty to allow def to plead guilty as habitual - sentence proper). 186
Williams (Jason)(PCR - def fully advised of his rights at plea - failed to show deficiency or prejudice). 187
Diggs (PCR - def stated he was satisfied w/ atty at plea - record shows no deficiencies).. 188
Lattimore (PCR - complained about trial and appellate atty - issues either barred as res judicata or barred for raising issues for the first time on appeal - failed to show prejudice). 190
Morris (PCR - failed to show how additional witnesses at sentencing would have helped - no prejudice shown). 191
Taylor (PCR - provided no evidence to support his claims).. 194
Graham (PCR - failed to support claim). 195
Byrne (PCR - claimed atty failed to investigation priors for habitual status - convictions sufficient so no IAC). 199

Information

Diggs (plea to information proper - def waived indictment for armed robbery).. . 188

Instructions

Banks (def's theory of the case instruction telling jurors if they found another person committed the crime they must acquit was covered in other instructions). 125
Shelton (no error denying theory of defense instruction on planted evidence - simply an effort to put legality of search before jury after judge already decided issue). 152

Accomplice

McInnis (court erred in granting instruction b/c no proof witness acted as def's accomplice in burglary - however since evidence showed def guilty of burglary, error harmless). 123

Assisted Suicide

Williams (David) (no error denying in murder case - no evidence to support granting instruction). 96

Cautionary Instructions

Mayers (instruction on prior conviction properly denied as inaccurate statement of law). 131

Circumstantial Evidence

Pilgrim (no error denying - officer witnessed def throw bag w/ drugs from car - direct evidence). 44
Gore (def gave confession - intent was only element entirely shown by circumstantial evidence - no error to deny).. 77
Kirkwood (no error denying in burglary and grand larceny case - direct evidence presented). 114
McInnis (case not wholly circumstantial - no error denying). 123
Moses (error to deny instruction when co-def refused to implicate def on stand - error harmless given weight of the evidence). 142

Culpable Negligence

Hudson (Gregory) (error to deny theory of case instruction that def was not under influence of drugs at time of the accident).. 88

Flight

Williams (Harvey) (no error granting instruction - def's actions inconsistent with fear). 110
Sanders (Keir) (Although drs gave valid reasons for flight, court found reasons were only educated guesses - no error granting).. 149

Identification

Brunner (misidentification theory encompassed by instructions as a whole). 57

Limiting

Lindsey (def failed to request limiting instruction on other crimes). 137

Necessity

Flowers (other than def's own statement, no evidence to support necessity instruction). 64

Presumption of Innocence

Peterson (instruction properly refused as covered by other instructions). . 117

Reasonable Doubt

Glenn (def's reasonable doubt instruction covered by other instructions - improper to define reasonable doubt). 102

Self-defense

Mayers **(self-def not a defense to felon in poss of firearm charge).. . . . . 131**

Witness Credibility/Demeanor

Williams (Nickey) **(not mandatory to give instruction on child witnesses to view testimony in light of age and understanding).. . . . . 24**
Ross **(no error refusing instructions on witness demeanor and conflicting testimony - covered by other instructions). 78**
Field **(no error denying instruction stating def was competent witness). . . 129**

Jurisdiction

Hill **(State had concurrent jurisdiction with federal government in housing area of Keesler AFB where child abuse occurred). 94**

Jury Issues

Challenges for cause

Mayers **(No abuse of discretion to deny challenge on jury who had work issues). 131**

Deliberations

Williams (Quintin) **(no error in providing two exhibits to jury after they had already deliberated for some time - also no error for judge to recognize jury split - no obj to either). 120**

Misconduct

Williams (Nickey) **(juror committed no misconduct by not admitting she knew witness - believed question meant close friends).. . . . . 24**
Dubose **(juror failed to disclose relationship to def's wife's ex-husband - no inference def was prejudiced). 62**
Rutland **(jurors obtained dictionary to look up "abuse"and "neglect" during felony child abuse case - def showed no prejudice). 122**

Qualifications/selection

Smith (Diapolis) **(courts are not required to apply any certain test or method to determine underrepresentation of minority jurors). 37**
Tate **(no error as court took curative action after potential juror stated she head sexual battery def had been in trouble in**

another instance). 3
Trevillion (Harmless error for court to excuse juror who had served on a case with 2 yrs - exemption no mandatory but must be claimed - no obj by def and prejudice to def shown). 76

Lesser included offenses/lesser offenses

Keys (no error denying manslaughter in murder case - no evidence to support). . . 41
Robinson (Jermain) (no error denying manslaughter in murder case - words alone on phone will not entitle def to heat of passion defense). 48
Shorter (no error denying manslaughter instruction - abundant evidence of deliberate design murder). 72
Gore (no evidence to support manslaughter - regardless, issue barred as manslaughter instruction offered by the State).. 77
Williams (David) (no error denying assisted suicide instruction in murder case - no evidence to support). 96

Manslaughter

Robinson (Jermain) (no error denying manslaughter in murder case - words alone on phone will not entitle def to heat of passion defense). 48

Mental Retardation

Doss (DP case - MR decision ultimately lies with trier of fact, not experts).. 1

Merger

McClellan (poss of pseudoephedrine did not merge with poss of precursors charge - state did not use pseudoephedrine as one of the precursors). 21

MISS CODE ANN. §97-5-33(5)

Renfrow (child pron statute not vague in this case - def charged with intentional poss).. 60

MISS.R.EVID. 403

McLaurin (I) (def must request balancing test).. 67
Mayers (No error for judge to find probative value of prior convictions outweighed prejudicial effect). 131

MISS.R.EVID. 404(b)/other bad acts

Flowers (def opened to the door to pending robbery charge). 64
Ross (no error denying mistrial when witness mentioned prior bad acts - same

witness testified in earlier trial of def - def could have taken steps to prevent recurrence). 78
Brown (no error admitting evidence of other cocaine def not on trial for - necessity to tell complete story).. 92
Madden (no error admitting prior bad acts in murder case - mostly hearsay concerning prior threats by def to victim).. 101
Peterson (def failed to request proper limiting instruction).. 117
Logan (no error allowing evidence of prior violence by def to mother of child abuse victim during child abuse/capital murder trial).. 126
Field (no error admitting poss of marijuana in poss of cocaine case - needed to tell a complete story). 129
Robinson (Willie) (error to admit prior conviction to prove intent to steal in burglary case - prior used as evidence of predisposition to steal).. 136
Lindsey (def failed to request limiting instruction on other crimes). 137
David (evidence that def told victim's wife family had given him trouble and he would not forget it was admissible to show state of mind).. 146
Pritchett (no error allowing evidence of gang involvement - minimal references and relevant to testimony).. 156

Miss.R.Evid. 609

Kirkwood (error to admit prior felonies of def over offer to stipulate, but harmless given weight of the evidence - also harmless error to require def to testify about priors). 114

Mistrials

Banks (no error denying when witness talked about def's criminal record - obj sustained and jury told to disregard).. 125
Graves (no error denying after alleged emotional outburst of witness). 139
Collins (no error denying mistrial after state violated motion in limine and mentioned def's nickname (two pistols) - name was part of evidence to be presented - it was how the victim knew def). 149

Opinion Testimony (Lay)

Kendrick (no error allowing investigator to discuss wound victim had - limited to what he perceived).. 66
Mayers (proper to allow witness to give opinion based on personal observation).. 131

Parole/Earned Time

Parker (§47-7-3 does not abolish parole). 19
Diggs (statute prohibits earned time for armed robbery). 188

Photographs/audio/videotapes

Barfield (photos not gruesome - no obj - def also used photos before jury)..... 9
Tanner (def objected to audio recording parents made when def called daughter - claimed manufactured but offered no authority)..... 56
Blakeney (no error in failing to redact video statement where police stated co-def had implicated def - if error, it was harmless). 86
Sanders (Keir) (No error allowing gruesome photos on projector)..... 149

Possession/Receiving Stolen Property

Tucker (def claimed State's theory was that he stole the items, so receiving incorrect charge - no error to describe burglary)..... 74

Post-Arrest Silence

Catchings (comments harmless error given weight of evidence)..... 54

Post-Conviction issues (PCR)

Phillips (decision on when MDOC releases inmate is administrative one - must raise issue administratively)..... 181
McLaurin (II) (def's atty failed to file appeal - PCR was late and was properly dismissed - however, court granted out of time appeal - def appeal dismissal of PCR - no error as same issues pending in out of time appeal) 185
Lattimore (after def granted leave to file, court required state to answer and conducted discovery - no error in failing to grant evidentiary hearing). .. 190
Walker (§47-7-27 not unconstitutional) 201

Discovery

Cherry (motion failed summary dismissal so not entitled to discovery).... 177

Evidentiary Hearings

Young (grant of PCR does not entitle one to evidentiary hearing)..... 158

Jurisdiction

Jackson (Robert) (SCT rulings on guilty plea appeal erroneous as court did not have original jurisdiction - trial court did).. 27
Amerson (not granted permission to file - no jurisdiction in circuit court). 175
Varnado (failed to request leave to file)..... 204

Newly Discovered Evidence

Jordan (evidence of other sexual partners of victim does not show def did

not have sex). 166
Hooks (affidavits from victim and victim's mother that they misstated victim's age in statutory rape case did not constitute newly discovered evidence). 174
Johnson (Sammie) (claimed an affidavit for man who admitted killing victim and denying he was hired by def - however, def pled guilty - plea negates there could be undiscovered evidence to prove innocence). 205

Procedural bars

Jackson (Robert) (deficient indictment not procedurally barred - omission of necessary element is jurisdictional). 27
Smith (Willie)(PCR properly denied as time barred). 167
Hooks (second PCR properly denied as successive writ). 174
Aguirre (pro se filing considered PCR - did not appeal - additional filings properly denied as successive writs).. 180
Catchings (Roderic)(court granted PCR claiming involuntary plea and re-sentenced def - def then filed another PCR - court erred in treating 2nd PCR as successive writ - 2nd PCR on a separate and distinct conviction and sentence). 184
Smith (Terrance) (def admitted to two prior PCRs - habeas should have been treated as another PCR and denied as successive).. 193
Glass (properly denied as successive writ).. 197
Johnson (Alex) (properly denied as a successive writ). 198
Wardley (filed petition claiming state inadequately funds public defender system - no error treating petition as PCR - properly denied as out of time, in wrong county, and w/o leave from SCT). 200
Walker (PCR motions are not proper for all inmate grievances - issues raises in pleadings which fall under PCR properly dismissed as successive) 201
Johnson (Sammie) (Newly discovered evidence on actual innocence in guilty plea did not exculpate def - still barred as successive).. 205

Post-Release Supervision

Dickerson (no error being released on PRS on day sentenced). 172
Burks (court had jurisdiction to revoke suspended sentence - PRS did have term of incarceration prior to suspension). 182

Prior Consistent/Inconsistent Statements

Smith (prior inconsistent statement of testifying witness not admissible as substantive evidence, but can be admissible under MRE 801(d)(1)© as

statement of identification). 6

Prison Mailbox Rule

Catchings (Roderic) **(burden on state to show prisoner failed to comply w/ rule). . 184**

Privileges

Shorter **(no error admitting call from def to his attorney about his intent to kill - crime exception to privilege applied - also no error admitting 911 from def's wife about murder - call made during an emergency and did not violate Rule 601). 72**

Williams (David) **(def failed to make sufficient record to find error in court refusing to allow priest to testify about conversations he had with victim, especially concerning victim's consideration of suicide). 96**

Probation

Walters **(def agreed he violated probation in exchange for grand larceny charge being dropped - can't challenge revocation later b/c charges dismissed). . . . 26**

Probable Cause

Renfrow **(sufficient probable cause to issue warrant based on 10 month old info from children who were shown porn on def's computer). 60**

Drummer **(police had probable cause to pull over def bumping the center line). . . . 95**

Peterson **(sufficient probable cause for warrant). 117**

Fluker **(officer had probable cause to stop a vehicle traveling near center line w/ tinted windows). 134**

Prosecutorial misconduct

Catchings **(def objected to questions designed to inflame jury - objections sustained - def asked for no other relief). 54**

McLaurin **(proper to question witness about incident prosecutors only found out about at trial - proper to question why def did not call witness to support) 67**

Jackson (Willie) **(def claimed prosecution theme of showing how bad drugs were in society was improper - however, def failed to obj or cited difference grounds on appeal then he did at trial - issue barred and w/o merit). 69**

Brown **(prosecutors kept alluding to sexual misconduct of def in drug case - however, judge kept sustaining obj - no request for mistrial - error allowing questions about accomplice guilty plea - no obj). 92**

Lynch **(error to allow prosecutors to ask def about statements his atty made - harmless though given weight of evidence). 100**

Williams (Harvey) **(prosecutors commented def only one who saw victim with**

gun when they knew another witnesses did too be was excluded - obj sustained so no error - prosecutor was "overzealous" but harmless)..... 110
Cherry (def failed to show that verdict would have been different had prosecutors shown grand jury BB gun used in robbery)..... 177

Recusal

Lindsey (def failed to obj to the trial judge - any obj waived)..... 137

Revocations

Walters (def agreed he violated probation in exchange for grand larceny charge being dropped - can't challenge revocation later b/c charges dismissed).... 26
Whitaker (evidence sufficient to revoke - def failed to raise issue of appointed counsel at hearing - issue barred)..... 165
Payne (conviction not necessary to revoke)..... 173
Scott (record insufficient to show def committed violation, only that he was arrested - remanded for evidentiary hearing)..... 176
Burks (court had jurisdiction to revoke suspended sentence - PRS did have term of incarceration prior to suspension - record shows def present at revocation)..... 182
Agent (def admitted violations - extra time for witnesses would not have changed result - no ineffective assistance of probation officer - officer told def he would probably be placed in RID - he was not - probation officer not the same as an atty - no error)..... 192
Walker (§47-7-27 not unconstitutional - copy of def's guilty plea presented and parole revoked) 201

Restraints/shackles

Jones (no error denying mistrial after jury saw def in shackles - judge voir dired jury on issue - no abuse of discretion)..... 39

Right to Counsel

Shatzer (when suspect experiences a lapse in time of more than two weeks after invoking the right to counsel, statements by the suspect during a second interrogation should not be suppressed if the suspect voluntarily waives the right to counsel)..... 36
Henry (def failed to show any prejudice b/c his atty took inactive status a month before trial)..... 116

Right to Remain Silent

Tate (no impermissible comment on right to remain silent by commenting on closing that it was "her word against his")..... 3

Robinson (Jermain) (state did not improperly comment on right to remain silent - def gave varying stories). 48

Right to Testify

Banks (no error to argue def had no defense - was not a comment on his failure to testify). 125
Spearman (although record showed def stated he wanted to testify, record "as a whole" indicates def did not want to testify). 147

Roadblocks/Traffic Checkpoints

Field (search of vehicle at roadblock reasonable - def consented - minor deviations in departmental policy on roadblock did not affect validity of search). 129

Search issues

Fisher (warrantless entry into house justified under emergency aid exception). . . . 31
Deeds (drawing of def's blood after accident w/o a warrant was not a 4th Amend violation - officers had probable cause and exigent circumstances). 10
McClellan (officer had sufficient enough description of vehicle to make stop). 21
Renfrow (sufficient probable cause to issue warrant based on 10 month old info from children who were shown porn on def's computer). 60
Ross (no error suppressing evidence found in def's car - def's brother who was in possession of car at the time, gave permission to search). 78
Williams (James) (police permitted to make investigatory stop of def riding a bike at 2:30 am in high crime area - gun fell from waistband and thus was in plain sight - biking w/o reflectors a violation of a municipal ordinance) 83
Drummer (police had probable cause to pull over def bumping the center line). . . . 95
Peterson (def failed to object to search warrant at trial). 117
Field (search of vehicle at roadblock reasonable - def consented - minor deviations in policy on roadblock did not affect validity of search). 129
Shelton (officers stopped car after seeing it weave for possible DUI - occupants nervous and refused search - officers brought drug dog which alerted to trunk - found large amount of marijuana - no error - furthermore, drug dog not an illegal search). 152
Bailey (PCR - issue waived by guilty plea). 159

Self-defense

Johnson (John) (def's actions did not rise to level of depraved heart murder - were the actions of one acting rashly out of heat of passion w/ a mistaken claim of self-def). 58

Sentencing Issues/Options:

Sanders (Keir) **(no abuse of discretion in finding habitual offender statute trumped insanity statute - def properly required to serve life for murder before being send to mental institution after being found not guilty by reason of insanity in second murder count). 149**
Bailey **(PCR - no credit for time served on federal charge awaiting for trial). 159**
Phillips **(PCR - no credit for time served in another state). 181**

Capital Murder

Neal **(no error resentencing def to life w/o parole for 1982 murder - statute allowing life w/o enacted in 1977). 65**
Maye **(judge had no option but to sentence def to life w/o parole when prosecution did not seek death penalty). 70**

Concurrent v. Consecutive

Phillips **(concurrent sentence does not mean Mississippi sentence ends at the same time Tennessee sentence does).. . . . . 181**

Cruel and Unusual Punishment

Williams (Bridgit) **(10 yrs w/o parole for felony shoplifting as habitual offender not cruel). 90**

Disproportionate/Excessive

Clay **(life w/o parole for poss of 2.37 grams of cocaine by 2nd time drug offender w/ prior robbery conviction not disproportionate). 43**
Brown **(def not punished for going to trial and getting harsher sentence that co-def - she was an habitual - court had no discretion - life w/o parole for poss of cocaine not disproportionate). 92**
Drummer **(life w/o parole for poss of small amount of marijuana not excessive - def was habitual w/ prior manslaughter conviction). 95**
Field **(no error sentencing poss of cocaine def to max of 8 yrs). 129**
Cummings **(life w/o parole for felony DUI as habitual offender not excessive). 144**
David **(15 yrs for pulling a gun and cursing and threatening victim not excessive). 146**
Cherry **(8 yrs for armed robbery w/ BB gun not excessive). 177**
Agent **(revoked 15 yr for statutory rape not excessive). 192**
Taylor **(19 yrs w/ 10 suspended for sale of morphine not excessive for cancer survivor). 194**

Enhancements

Mayers (plain error to use enhancements passed after crime committed). . 131

Illegal Sentences

Parker (Def illegally sentenced to life without parole for simple murder - §47-7-3 applies only to the internal operating procedures of MDOC does not affect a judge's sentencing prerogative). 19
Whitaker (sentence after revocation exceeded max allowed - remanded to correct clerical error). 165
White (after sentencing def disrupted other proceedings - court warned def but would not calm down - resentenced to longer sentence - no error - sentence can be altered until end of court term).. 171
Burks (20 yrs suspended for poss w/ intent not illegal when revoked). 182

Orders

Chandler (where there is a conflict between the oral and written sentence, the written sentencing order prevails). 179

Severance

Williams (Nickey) (motion to sever counts on day of trial untimely).. 24

Speedy Trial

Drummond (issue barred for failing to raise issue at trial). 51
Williams (David) (no violation being tried 571 days after waiver of arraignment - constitutional argument not raised before trial judge and statutory argument raised after 270 days just 5 days before trial). 96
Young (PCR - waived as issue raised on direct appeal). 158
Bailey (PCR - issue waived by guilty plea).. 159

Stipulations

Peterson (stipulation did not have to be admitted into evidence - reading it to the jury was sufficient). 117

Sufficiency/Weight of the Evidence

Aggravated Assault

Drummond (weight of the evidence issue). 51
Kendrick (stabbing of inmate at Parchman on video - homemade knife

dangerous weapon - victim did not have to suffer serious injury, just attempt). 66
Camper **(Def claimed victim shot by accident during struggle). 105**
Mayers **(of LEO - def claimed he did not know people coming into his house were police - jury issue). 131**
Chatman **(agg assault and burglary - *Lindsey* brief). 138**

Armed Robbery

Johnson (Joey) **. 13**
Williams (Quintin) **(armed robbery, kidnapping, felon in poss of firearm). 120**

Burglary

Brunner **(also w/ aggravated assault, armed robbery, and auto theft). 57**

Carjacking

Moses **. 142**

Capital Murder

Logan **(child abuse underlying felony). 126**

Child Abuse

Anthony **(felony child abuse in holding 9 month old in scalding water). 89**
Hill **(felony child abuse on military installation). 94**
Rutland **(circumstantial evidence and medical expert testimony). 122**

Child Pornography

Renfrow **(state expert testified viruses were not responsible for images on computer - pictures stored in file created by def). 60**

Conspiracy

Anderson **(conspiracy to sell hydrocodone). 82**
Green **(conspiracy to introduce a controlled substance into a jail). 106**

Credit Card Fraud

Murray **. 40**

Driving near the center lane

Fluker (no testimony provided that def was driving near center line, only that he was arrested for it - insufficient - intent of statute was to prevent drivers from preventing people from passing him). 134

DUI

Cummings (Felony DUI). 144

Embezzlement

Barnes. 18

Fondling/Touching Child for lustful purposes/Gratification of Lust

Dubose (victims testified in graphic detail supported by medical evidence). 62

Grand Larceny

Kirkwood (jury could infer value of van in excess of $500 from evidence). . 114

Habitual Offender

Williams (James) (State failed to prove 2 priors). 83
Joiner (def admitted habitual status at plea - waives sufficiency issue). . . . 186

Insanity

Sanders (Keir) (classic battle of experts on whether def insane). 149

Manslaughter

Barfield (def claimed Weathersby should apply, but def had inconsistencies in story - verdict not against weight of evidence). 9
Pruitt (def claimed self-defense - evidence sufficient). 15
Graves (jury to resolve contradicting testimony). 139
Martin (not entitled to acquittal based on *Weathersby* rule - another witness testified victim did nothing to provoke attack). 148

Murder

Parker (murder, aggravated assault and poss of a weapon on educational property). 19
Welch (*Weathersby* does not apply as def gave conflicting stories). 47

Johnson (John) (evidence insufficient to show depraved heart murder - remanded for resentencing on manslaughter).. 58
Shorter (def claimed heat of passion). 72
Ross. 78
Blakeney (proof showed deaths by suffocation and strangulation).. 86
Madden (circumstantial evidence). 101
Glenn (cold case). 102
McBride (*Lindsey* brief). 109
Coleman (felony murder). 143
Sanders (Keir) (classic battle of experts on whether def insane - inconsistent verdicts reviewed as sufficiency of evidence). 149

Possession of a controlled substance

Hudson (Vincent) (in poss of trace amount of cocaine case, state must show def knew he possessed the trace amount - trace in his pocket insufficient to show def knew cocaine in clothing). 23
Jones (sufficient evidence def possessed cocaine w/ intent). 39
Clay (poss of cocaine).. 43
Woods (poss of controlled substantive w/in a correctional facility).. 45
Peterson (poss of cocaine w/ intent). 117
Bond (poss of meth w/ intent and poss of precursors w/ intent to manufacture). 127
Williams (Nolan) (poss of cocaine w/ intent - def claimed cocaine was for personal use - had just sold cocaine and had lots of cash). 130
Shelton (poss of more than 5 kilos of marijuana). 152
Sistrunk (poss of hydrocodone).. 154

Possession of a firearm by a felon

Mayers (self-def not a defense to charge). 131

Possession of Precursors

McClellan. 21

Possession of stolen property

Tucker (stolen items found in shed where def lived).. 74
Mayers (poss of stolen firearm - def took gun as payment for cocaine - reasonable to infer it was stolen). 131

Robbery

Sanders (Robert) (def claimed misidentification). 49

Sale/Delivery/Transfer of Controlled Substance

Buckley **(sale on video).. . . . . 50**
Perkins **(sale of cocaine near a church - conflicting evidence of location of church for jury to resolve). 84**
Baskin **(sale of cocaine). 104**
Robinson (Billy) **(sale of cocaine - *Lindsey* brief).. . . . . 157**

Sexual Battery

Tate **(Sexual battery and fondling).. . . . . 3**
Abernathy**. 16**
Williams (Nickey) **(sufficient on Count I - insufficient evidence on Count II - expert could not say child was abused to a reasonable degree of medical certainty). 24**
Tanner**. 56**

Shoplifting

Phillips **(guilty plea waived sufficiency issue in felony shoplifting case). . . 181**

Simple Assault on LEO

Moten **(assault on correctional officer). 53**

Statutory Rape

Payton **(*Lindsey* brief). 84**
Timmons**. 112**

Tender Years

Williams (Nickey) **(no error admitting hearsay from witness who talked to child victims). 24**

Venue

Barfield **(no error denying change of venue based on pre-trial publicity). 9**
Maye **(def has fundamental constitutional right to be tried in county where crime occurred - def withdrew request to change venue - no reason why the court should not have granted request). 70**

Voir dire

Presley **(the 6th Amend forbids a judge from closing a courtroom to the public during voir dire proceedings). 33**

***Weathersby* Rule**

Barfield **(def claimed *Weathersby* should apply, but def had inconsistencies in story). 9**
Welch **(*Weathersby* does not apply as def gave conflicting stories). 47**
Martin **(not entitled to acquittal based on rule - another witness testified victim did nothing to provoke attack). 148**

MISSISSIPPI SUPREME COURT DECISIONS
October 15, 2009 to April 8, 2010

DEATH PENALTY CASES:

October 22, 2009

NO. 2007-CA-00429-SCT

ANTHONY DOSS
v.
STATE OF MISSISSIPPI

ON MOTION FOR REHEARING (case originally affirmed December 11, 2008)

NATURE OF THE CASE: CIVIL - DEATH PENALTY - POST CONVICTION

PART ONE: REVERSED AND REMANDED.
PART TWO: AFFIRMED

TRIAL JUDGE: HON. JOSEPH H. LOPER, JR.
COURT FROM WHICH APPEALED: GRENADA COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: ROBERT B. McDUFF
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: MARVIN L. WHITE, JR.

GRAVES, PRESIDING JUSTICE, FOR THE COURT
PART ONE

WHETHER DOSS RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL AT THE SENTENCING PHASE OF HIS TRIAL

VOTES: PART ONE: WALLER, C.J., DICKINSON, KITCHENS, AND CHANDLER, JJ., CONCUR. DICKINSON, J., SPECIALLY CONCURS WITH SEPARATE WRITTEN OPINION JOINED BY CHANDLER, J. CHANDLER, J., SPECIALLY CONCURS WITH SEPARATE WRITTEN OPINION JOINED BY WALLER, C.J., AND DICKINSON, J. LAMAR, J., DISSENTS WITH SEPARATE WRITTEN OPINION JOINED BY CARLSON, P.J., RANDOLPH AND PIERCE, JJ. PART TWO: WALLER, C.J., CARLSON, P.J., DICKINSON, RANDOLPH, CHANDLER AND PIERCE, JJ., CONCUR. GRAVES, P.J., DISSENTS WITH SEPARATE WRITTEN OPINION JOINED BY KITCHENS, J.

This is a PCR motion on a death penalty case. Doss was granted leave to seek a hearing in the trial court on the issues of mental retardation and ineffective assistance of counsel during the death

penalty phase of the trial. The court reversed the trial court on the issue of ineffective assistance of counsel.

Doss argued that attorney Bailey failed to investigate mitigating evidence and only presented one witness in mitigation during the penalty phase. The court analyzed Bailey's performance using the *Strickland* two-part test. The court examined the affidavits presented by Doss and quoted at length from the previous opinion of the court. The trial court conducted a hearing and found that Doss did not receive ineffective assistance of counsel. The court found this holding to be clearly erroneous and reversed. The court reviewed the affidavit of trial counsel Bailey, and found that the trial judge erred in holding that Bailey was inconsistent in his testimony and affidavit. Trial counsel has a duty to explore mitigating evidence and in this case he did not do so. He had several avenues of mitigation that could have been explored but he did none. Taken together, this was ineffective assistance and the trial court was reversed.

PART TWO
LAMAR, JUSTICE, FOR THE COURT:

WHETHER THE DECISION IN *ATKINS V. VIRGINIA* REQUIRES THAT THE DEATH SENTENCE IN THIS CASE BE SET ASIDE

In part II of this opinion the majority found that the trial court did not err in finding Doss not to be mentally retarded. The court examined all of the evidence and testimony of the mental health experts and found that Doss had an IQ of approximately 70. While this is borderline, the court held this is within an acceptable range in which to execute persons in this state.

In this case, experts took opposite positions as to whether Doss is mentally retarded. The ultimate issue of whether Doss is, in fact, mentally retarded for purposes of the Eighth Amendment, is one for the trial judge, who sits as the trier of fact and assesses the totality of the evidence as well as the credibility of witnesses. While expert opinions are helpful and insightful, the ultimate decision of mental retardation is not committed to the experts, but to the trier of fact.

The trial judge heard all the evidence and the expert opinions offered, and found the Whifield doctors to be more credible. The trial judge followed the procedures we set forth in ***Chase*** and concluded that Doss had failed to prove by a preponderance of evidence that he is mentally retarded. The Court cannot say that the trial judge clearly erred in doing so. The court therefore affirmed the trial court's denial of Doss' ***Atkins*** claim.

DICKINSON, JUSTICE, SPECIALLY CONCURRING

Dickinson wrote separately to express his concern that, in recent years, the acceptable standard for effective assistance of counsel in death-penalty cases has slipped to an unacceptably low level.

CHANDLER, JUSTICE, SPECIALLY CONCURRING

Chandler writes separately to also criticize trial counsel. There is a reasonable probability that, but for counsel's failure to investigate the available mitigating evidence, the penalty phase would not have resulted in a sentence of death.

LAMAR, JUSTICE, DISSENTING TO PART ONE

Lamar dissented to Part One of the majority opinion. She would have affirmed the trial judge on the issue of ineffective assistance of counsel and would have affirmed the penalty of death notwithstanding the errors of counsel during the penalty phase. Lamar would actually hold that Bailey was competent in his representation of Doss. She complains of the lack of deference given to the trial judge.

GRAVES, PRESIDING JUSTICE, DISSENTING TO PART TWO

Graves dissents to the majority finding that Doss is not mentally retarded. He argues that the majority relies on an incomplete and admittedly partially inaccurate report from Whitfield to find that Doss is not mentally retarded pursuant to ***Atkins v. Virginia***. He would find that the evidence in this case clearly requires a finding that Doss is mentally retarded.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO57733.pdf

NON-DEATH PENALTY CASES:

October 29, 2009

NO. 2008-KA-01318-SCT

ERIC TATE
v.
STATE OF MISSISSIPPI

NATURE OF THE CASE: CRIMINAL - FELONY - SEXUAL BATTERY AND FONDLING
SENTENCED TO A TOTAL OF 50 YEARS

TRIAL JUDGE: HON. FORREST A. JOHNSON, JR.
COURT FROM WHICH APPEALED: AMITE COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: SANFORD E. KNOTT
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: LADONNA C. HOLLAND
DISTRICT ATTORNEY: RONNIE LEE HARPER

CARLSON, PRESIDING JUSTICE, FOR THE COURT
VOTES: WALLER, C.J., DICKINSON, RANDOLPH, LAMAR, KITCHENS, CHANDLER AND PIERCE, JJ., CONCUR. GRAVES, P.J., NOT PARTICIPATING

FACTS

Tate lived with his wife and step-daughter Brittany in Amite County. Brittany was nine years old at the time of this incident. Tate's mother-in-law, Holloway, became suspicious of Tate's

relationship with Brittany because of repeated phone calls to her when he was out of town. One day Holloway listened to a conversation between Tate and Brittany. He asked her to wear inappropriate clothing when he returned home. Holloway accused Tate of improper conduct with Brittany and took Brittany to police to give an interview. Professionals were called in and Brittany told of the sexual contact Tate had with her. Brittany was also physically examined by medical professionals and it was determined that she had been sexually abused. Brittany's mother refused to believe her and instead testified on behalf of Tate. Tate was convicted and sentenced to fifty years in custody.

ISSUES

Tate raises five issues on appeal: (1) Whether the trial court erred by not granting a mistrial when the prosecution commented on Tate's right not to testify; (2) whether the trial court erred by permitting prejudicial evidence to show "consciousness of guilt;" (3) whether the trial court's failure to examine individual jurors or grant a mistrial was error when the jury panel was exposed to prejudicial information; (4) whether the evidence "was not legally sufficient" to support the verdict; and (5) whether the trial court erred in denying Tate's motion for a new trial, given that the overwhelming weight of the evidence favored Tate.

HOLDING

First, Tate argues that he was entitled to a mistrial because the prosecutor stated in closing that these cases often come down to "her word against his." Tate says that this is an impermissible comment to his right to remain silent. The court held that the argument was in response to the defense closing and to testimony of Brittany's mother during trial. The court reviewed the argument and quoted the prosecutor. The court held that the comments were not an impermissible comment on Tate's silence and it was not error. The trial judge sustained the defense objection on this point but the court held that the trial judge was being overly cautious and that the comments were in fact permissible comments on the evidence. This issue is without merit.

Next, Tate complains of the admission of prejudicial evidence which shows "consciousness of guilt." Tate specifically complains of two instances where evidence that he had attempted suicide was admitted. The court examined both instances of complained of testimony and found no error. The court sustained defense objections when raised and conducted the proper balancing test concerning the admission of the testimony. There was no evidence that Tate actually attempted suicide. The first instance dealt with police concerns that he may attempt suicide. The second instance was in a document Brittany's mother prepared documenting statements made by Tate. In fully examining the statements, there was no error.

Next, Tate complains that during voir dire a juror mentioned that she had heard of Tate and another instance of him being in trouble. The defense again asked for a mistrial and other curative actions. The trial judge admonished the jury to not consider any other case against the defendant "because there was no other case." The court found that the trial judge took appropriate curative action and this issue was without merit.

Finally, Tate challenges the sufficiency of the evidence. The court reviewed all of the evidence and found it to be sufficient to sustain the conviction. This issue is also without merit and the conviction is affirmed.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO58560.pdf

NO. 2008-KA-01264-SCT

DOUGLAS JAY, JR.
v.
STATE OF MISSISSIPPI

NATURE OF THE CASE: CRIMINAL - FELONY - MULTIPLE COUNTS OF DRUG POSSESSION

DISPOSITION: REVERSED AND REMANDED
TRIAL JUDGE: HON. MARCUS D. GORDON
COURT FROM WHICH APPEALED: NEWTON COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANT: HENRY PALMER
MARVIN E. WIGGINS, JR.
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: STEPHANIE B. WOOD
DISTRICT ATTORNEY: MARK SHELDON DUNCAN

DICKINSON, JUSTICE, FOR THE COURT
VOTES: WALLER, C.J., CARLSON AND GRAVES, P.JJ., RANDOLPH, LAMAR, KITCHENS, CHANDLER AND PIERCE, JJ., CONCUR

FACTS

After obtaining a search warrant, reading Jay his ***Miranda*** rights, and searching him, law enforcement officers found three bags on his person, one of which contained an off-white substance. The second bag contained a leafy green substance, and the third contained pills. These substances were later determined to be methamphetamine, marijuana, and xanax. He was also found to be in possession of a firearm as a prior felon. Jay was indicted but prior to trial he was assaulted and sustained brain damage. On physician provided a statement that Jay was not competent to assist in his defense. Jay did not appear for trial and was tried in abstentia and convicted. Jay was sentenced to thirty-three years in custody.

ISSUE

Jay raised several issues on appeal but because the court found the issue on a mental evaluation to be dispositive, that was the only issue addressed on appeal.

HOLDING

In analyzing this issue, the court looked at Rule 9.06 of the Uniform Circuit and County Court Rules. The court noted that the rule requires that a the trial judge shall conduct a hearing to determine the competency of the defendant. In this case, the report of the expert was filed after trial. There is nothing in the record to show that the judge even considered the report. Nothing in the record indicates that the trial court ever held a competency hearing or made findings as to Jay's competency to stand trial. Therefore, the trial court's failure to hold a competency hearing was a violation of Jay's constitutional rights and, therefore, requires reversal.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO57991.pdf

November 5, 2009

NO. 2007-CT-00059-SCT

KENIVEL SMITH
v.
STATE OF MISSISSIPPI

NATURE OF THE CASE: CRIMINAL - FELONY - AGGRAVATED ASSAULT

DISPOSITION: THE JUDGMENT OF THE COURT OF APPEALS IS REVERSED. THE JUDGMENT OF THE TUNICA COUNTY CIRCUIT COURT IS REINSTATED AND AFFIRMED

ON WRIT OF CERTIORARI

TRIAL JUDGE: HON. ALBERT B. SMITH, III
COURT FROM WHICH APPEALED: TUNICA COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: GEORGE T. HOLMES
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: W. GLENN WATTS
DISTRICT ATTORNEY: LAURENCE Y. MELLEN

LAMAR, JUSTICE, FOR THE COURT

VOTES: WALLER, C.J., CARLSON, P.J., DICKINSON, RANDOLPH, KITCHENS, CHANDLER AND PIERCE, JJ., CONCUR. GRAVES, P.J., DISSENTS WITHOUT SEPARATE WRITTEN OPINION

FACTS

Davis was shot in the leg. He gave statements to police immediately after the incident saying that Smith had shot him. Further, Smith followed Davis as Davis ran away and attempted to shoot him again. However, at trial Davis refused to identify Smith as the shooter. Davis was shown his prior statements and he claimed that these did not refresh his memory. The trial judge then declared Davis unavailable because of his memory and allowed the statements into evidence over Smith's objections. The court of appeals reversed. The state requested certiorari and the Court granted the request.

ISSUES

The issues addressed by the court were whether the prior unsworn statements could be entered into evidence when Davis testified at trial, and whether the statements were properly admitted as evidence of Smith's guilt.

HOLDING

In the instant case, Davis's appearance on the witness stand at trial provided Smith with the opportunity to confront and cross-examine him, which is all that is required by the Confrontation Clause and ***Crawford***. Smith's Sixth Amendment right to confront his accuser, therefore, was not violated by the admission of Davis's statements, and that the Court of Appeals erred in so finding. The COA reasoning that Davis was not able to be cross-examined on the date that he gave the statement was flawed.

Next, the court held that the trial court erred in finding that Davis was unavailable as a witness due to memory loss. While a prior inconsistent statement of a testifying witness can be used to impeach the witness's credibility, it is not admissible as substantive evidence of the defendant's guilt. While Davis's prior inconsistent statements would have been admissible for impeachment purposes, the court found that it was error to admit them as substantive evidence under Rule 804(b)(5). However, Mississippi Rule of Evidence 801(d)(1)(C) provides that a statement is not hearsay if "[t]he declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is one of identification of a person made after perceiving the person."

Davis's statements were not admissible for substantive purposes under Mississippi Rule of Evidence 804(b)(5) or as prior inconsistent statements, but the Court found that they were admissible as statements of identification under Mississippi Rule of Evidence 801(d)(1)(C) . The decision of the court of appeals is reversed.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO59177.pdf

November 12, 2009

No. 2008-KA-01139-SCT

GABRIEL McDOWELL a/k/a GARY McDOWELL

v.

STATE OF MISSISSIPPI

ORDER

The Hancock County Circuit Court sentenced McDowell to life as a habitual offender. The sentence was handed down based upon an order of a three-justice panel of the Supreme Court. The prior order was vacated and this case was remanded for imposition of a thirty year sentence.
To View the Full Order Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO59828.pdf

November 19, 2009

NO. 2008-KA-00981-SCT

RELIOUS DENSMORE
v.
STATE OF MISSISSIPPI

NATURE OF THE CASE: CRIMINAL - FELONY - SALE OF COCAINE
DISPOSITION: REVERSED AND REMANDED

TRIAL JUDGE: HON. LESTER F. WILLIAMSON, JR.
COURT FROM WHICH APPEALED: LAUDERDALE COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANT: OFFICE OF INDIGENT APPEALS
BY: HUNTER NOLAN AIKENS, LESLIE S. LEE
ATTORNEYS FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: LAURA H. TEDDER
DISTRICT ATTORNEY: BILBO MITCHELL

KITCHENS, JUSTICE, FOR THE COURT

VOTES: WALLER, C.J, GRAVES, P.J., DICKINSON, AND CHANDLER, JJ., CONCUR. PIERCE, J., DISSENTS WITH SEPARATE WRITTEN OPINION, JOINED BY CARLSON, P.J., RANDOLPH AND LAMAR, JJ.

FACTS

Densmore was indicted for selling cocaine to a confidential informant. The informant was sent to purchase drugs and wore an audio and video surveillance camera. The sound for the recording did not work properly but the CI later identified Densmore as the person selling drugs. Agents were able to monitor the conversation. On the morning of trial, Densmore announced that he would not plead but instead proceed to trial. That day, the state informed the defense of the informant's identity, Spraggins, and the existence of a taped confession. (The DA's Office had a policy not to disclose the identity of the CI until after plea negotiations were completed). The defense moved for a continuance. The trial judge ruled that the tape could not be used and gave the defense three and a half hours to

obtain information about Spraggins. The defense moved for a continuance based on newly revealed evidence which the judge overruled.

ISSUE

Densmore contends that the late disclosure of this evidence was unjust and prejudicial and that the court erred in not granting his continuance.

HOLDING

The court found that the State's main witness and the only eyewitness to the events giving rise to the charge against Densmore was Spraggins. In accordance with Rules 9.04(A)(1) and 9.04(B)(2), the prosecution was required to disclose Spraggins's name and address to Densmore prior to the day of trial. Here, the trial court erred by refusing to grant a continuance when the State did not disclose the identity of its star witness until the morning of trial. Densmore's conviction was reversed and the case was remanded for a new trial. The court reaffirmed it's prior holding in *Box* and the recent case of *Fulks* regarding discovery violations.

PIERCE, DISSENTING

In dissent, Pierce argued that Densmore has not demonstrated that previously-undisclosed evidence introduced at trial took him by surprise, prejudiced him, or affected one of his substantial rights. Therefore, his arguments on this point were without merit.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO58726.pdf

December 3, 2009

NO. 2008-KA-01606-SCT

JONATHAN BARFIELD
v.
STATE OF MISSISSIPPI

NATURE OF THE CASE: CRIMINAL - FELONY - MANSLAUGHTER

SENTENCED TO TWENTY YEARS

TRIAL JUDGE: HON. LISA P. DODSON
COURT FROM WHICH APPEALED: HARRISON COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANT: OFFICE OF INDIGENT APPEALS
BY: BENJAMIN ALLEN SUBER, LESLIE S. LEE
ATTORNEYS FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: LISA LYNN BLOUNT

DISTRICT ATTORNEY: CONO A. CARANNA, II

CHANDLER, JUSTICE, FOR THE COURT

VOTES: WALLER, C.J., CARLSON AND GRAVES, P.JJ., DICKINSON, RANDOLPH, LAMAR, KITCHENS AND PIERCE, JJ., CONCUR.

FACTS

Barfield was indicted for the murder of his girlfriend, Talley. Barfield claimed that he accidentally shot Talley when they bumped into each other. Prosecutors offered witness testimony that Talley had broken up with Barfield and that Barfield was angry about the break up. Barfield was convicted of manslaughter and sentenced to twenty years.

ISSUES

Barfield argues about the admissibility of the photographs, pre-trial publicity required a change of venue, that he was entitled to a directed verdict based upon his version of the facts, and the weight of the evidence.

HOLDING

First, Barfield argues that the photographs were gruesome and unfairly prejudicial. Specifically, Barfield complains of a photograph which shows up close the entrance wounds of the bullet. However, the court points out that Barfield did not object to the introduction of this evidence and thus waives the issue. Notwithstanding the procedural bar, the court held this issue to be without merit as the admission of evidence is reviewed for abuse of discretion. The court distinguished the cases cited by Barfield and held that the photographs were admissible. Also, Barfield used the photos in his case before the jury. The court held that if they were prejudicial, Barfield would not have used the photos in his case.

Next, Barfield argues that he was denied a fair trial due to pre-trial publicity. He claims it was error for the court to deny his motion to change venue. The decision to change venue is reviewed for abuse of discretion. In this case, thirteen of the of the sixty venire persons had seen pre-trial publicity. Only one of the twelve selected for the jury had seen any of the articles. Here, the totality of the voir dire resulted in the seating of a fair and impartial jury. This issue is without merit.

Next, Barfield argues that he was entitled to a directed verdict because of the ***Weathersby*** Rule. This Rule states that the defendant's version of events must be accepted if it is reasonable and not contradicted in material particulars. The court held that despite Barfield's assertion that his testimony was uncontradicted, the evidence presented showed otherwise. The evidence showed inconsistencies as to the placement of the gun at the time of the shooting, the disposal of the gun, and the nature of the relationship between Barfield and Talley. "Where conflicting stories are given about a homicide by the accused, the ***Weathersby*** Rule does not apply."

Finally, Barfield argues that the verdict was against the weight of the evidence. After reviewing all of the evidence, the court held that allowing the verdict to stand does not sanction an unconscionable injustice. The verdict was affirmed.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO59954.pdf

NO. 2008-KA-00146-SCT

JOHN DEEDS
v.
STATE OF MISSISSIPPI

NATURE OF THE CASE: CRIMINAL - FELONY - DUI INJURY

SENTENCED TO 15 YEARS WITH 8 YEARS POST-RELEASE SUPERVISION

TRIAL JUDGE: HON. ROBERT P. CHAMBERLIN
COURT FROM WHICH APPEALED: DESOTO COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANT: T. SWAYZE ALFORD, HOLLIE M. MILLER
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: STEPHANIE B. WOOD
DISTRICT ATTORNEY: JOHN W. CHAMPION

LAMAR, JUSTICE, FOR THE COURT

VOTES: WALLER, C.J., CARLSON, P.J., DICKINSON, RANDOLPH AND PIERCE, JJ., CONCUR. KITCHENS, J., DISSENTS WITH SEPARATE WRITTEN OPINION JOINED BY GRAVES, P.J., AND CHANDLER, J.

FACTS

Deeds was a driver involved in a three vehicle collision in Olive Branch. When officers arrived at the scene, Deeds was pinned behind the wheel of his vehicle. Officers testified that Deeds smelled of an "intoxicating beverage" and found a half empty half-gallon bottle of whiskey in the vehicle. Deeds was airlifted to Memphis and officers arrived at the Memphis hospital later. They instructed nurses to draw blood from Deeds and took the vial of blood back to Mississippi for testing. Occupants in the other vehicles were also injured. Deeds was issued a citation for DUI and for no proof of insurance. On the date of trial, Deeds pleaded guilty to the insurance charge and the court dismissed the DUI charge. In his order the trial judge noted that the City could not proceed with the case because it could not prove its case. Nearly two months later, Deeds was indicted for DUI causing injury. He was convicted and sentenced to fifteen years.

ISSUES

On appeal, Deeds argued double jeopardy and the admissibility of the blood alcohol tests.

HOLDING

First, Deeds argued that jeopardy attached on his original trial date and that the trial judge erred in denying his motion to dismiss. The state argues that the municipal court did not adjudicate the merits of the case and thus jeopardy did not attach. The court held that in this case, the municipal judge heard no witnesses and received no evidence. Therefore, Deeds was never "put to trial before the tried of facts." The court held that the judge's comments on the order relative to the DUI charge do not contain any findings of the court; rather, the court merely recorded the reasons that the prosecutor gave for not proceeding to trial on the DUI charge. Therefore, the court held that Deeds was never placed in legal jeopardy and so double jeopardy was not an issue.

Next, the court examined the issue of admissibility of the blood tests. Deeds argued that the taking of his blood without his consent was a violation of his Fourth Amendment rights and that he was deprived of the right to confront witnesses because the nurse who drew his blood was not called to testify. Deeds asserts that because the nurse who drew his blood was not identified, he was denied the safeguard afforded by Mississippi Code Section 63-11-9,6 which specifies that "any qualified person acting at the request of a law enforcement officer may withdraw blood" pursuant to Section 63-11-7. In a potentially far reaching decision, the court held that admissibility of evidence is governed by the Rules of Evidence and not by statute. The court held that Deeds was challenging the authenticity of the evidence and only asserted that tampering or contamination could have occurred and that the Rules of Evidence have never required the proponent of evidence to produce every handler of evidence. Therefore this issue is without merit.

Next, the court examined the right to confrontation. Deeds claims that he was unable to cross-examine the person who drew his blood. The officer testified that he observed the blood being drawn and he delivered the blood to the crime lab. Both the officer and the lab technician were available to testify. The court held that the nurse who drew the blood was not considered a witness against Deeds. Therefore, the admission of the blood test did not violate the right to confront witnesses.

Finally, Deeds argues that the taking of his blood constituted an unlawful search and seizure. The court held that Deeds was not arrested at the time of the accident and instead was transported to the hospital for medical treatment. Therefore, the taking of his blood was not a search incident to arrest. The court held that drawing blood evidence from a defendant at the hospital without a warrant following an accident was not a violation of the defendant's Fourth Amendment rights because the law enforcement officer had probable cause. The court held that exigent circumstances existed which made obtaining a warrant difficult. The officer testified that it would have taken one and a half to two and a half hours to obtain a warrant. The court ignored the fact that the blood was drawn in another state and that the magistrate from Desoto County did not have the authority to issue a warrant to be executed in another state.

KITCHENS, JUSTICE, DISSENTING:

In dissent, Kitchens argues that it cannot seriously be argued that Deeds was not placed

in jeopardy when he appeared before the municipal judge for trial. Deeds's DUI case was set for trial in the court in which the charge was pending. He appeared in that court, at the appointed time, with his attorney, to answer to that charge. When the case was called, the prosecutor informed the court that the city was unable to proceed because of insufficient evidence, and, along with defense counsel and the defendant, he acknowledged that he did not believe he had a viable case by signing a detailed court order to that effect. That agreed order was presented to the presiding judge, who signed it. It was duly filed with the court clerk. One can readily glean from that order that the DUI charge against Deeds was, then and there, fully and finally dismissed; Deeds was acquitted of DUI. Neither the State of Mississippi nor this Court can constitutionally resuscitate that DUI charge.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO59041.pdf

December 17, 2009

NO. 2008-KA-01077-SCT

JOEY DANTE JOHNSON
v.
STATE OF MISSISSIPPI

NATURE OF THE CASE: CRIMINAL - FELONY - THREE COUNTS OF ARMED ROBBERY

SENTENCED TO FORTY-ONE YEARS AS AN HABITUAL OFFENDER

TRIAL JUDGE: HON. VERNON R. COTTEN
COURT FROM WHICH APPEALED: LEAKE COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANT: TODD W. SOREY, JERRY L. BUSTIN, GAR N. SCHWIPPERT
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: LAURA H. TEDDER
DISTRICT ATTORNEY: MARK S. DUNCAN

LAMAR, JUSTICE, FOR THE COURT

VOTES: WALLER, C.J., CARLSON, P.J., DICKINSON, RANDOLPH, KITCHENS, CHANDLER AND PIERCE, JJ., CONCUR. GRAVES, P.J., CONCURS IN RESULT ONLY

FACTS

Green, Whittington, and McKee each testified that Johnson pulled out a gun a robbed each of the three at the Harmony Community Center. Johnson's version of events differs in that he claims that he merely defended himself when the three fought with him.

ISSUES

Johnson argues that Section 99-19-81 which deals with mandatory sentencing is unconstitutional, ineffective assistance of counsel, and weight and sufficiency of the evidence.

HOLDING

First, the court examines Johnson's issue dealing with Section 99-19-81. The court noted that this issue is procedurally barred as it was not raised during the sentencing phase. Notwithstanding the bar, the court found this issue to be without merit.

Next, the court looked at Johnson's claim of ineffective assistance of counsel. However, the court determined that many of the arguments raised by Johnson are inappropriate for review on direct appeal. In reviewing the issues that were able to be reviewed, the court found no merit to the issue.

Finally, Johnson argues the weight and sufficiency of the evidence. After reviewing the record, the court held that a rational jury could find the essential elements of armed robbery beyond a reasonable doubt. Likewise, the motion for a new trial was also properly denied after a review of the evidence. The conviction and sentence was affirmed.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO60307.pdf

January 21, 2010

NO. 2007-CT-00443-SCT

MARY REED EVANS
v.
STATE OF MISSISSIPPI

NATURE OF THE CASE: CRIMINAL - MISDEMEANOR - DUI

DISPOSITION: THE JUDGMENT OF THE COURT OF APPEALS IS AFFIRMED. THE JUDGMENT OF THE MONROE COUNTY CIRCUIT COURT IS REVERSED AND THIS CASE IS REMANDED FOR A NEW TRIAL

ON WRIT OF CERTIORARI

TRIAL JUDGE: HON. THOMAS J. GARDNER, III
COURT FROM WHICH APPEALED: MONROE COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: JOSEPH JOSHUA STEVENS, JR.
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: LADONNA C. HOLLAND
DISTRICT ATTORNEY: JOHN RICHARD YOUNG

PIERCE, JUSTICE, FOR THE COURT

VOTES: WALLER, C.J., CARLSON, P.J., RANDOLPH, LAMAR, AND CHANDLER, JJ., CONCUR. KITCHENS, J., CONCURS IN RESULT ONLY WITH SEPARATE WRITTEN OPINION JOINED BY GRAVES, P.J. AND DICKINSON, J.

FACTS

Evans and a friend went shopping in Tupelo. After shopping the pair went to a restaurant for dinner and drinks. Evans then dropped the friend off at home and was proceeding to her home when she was stopped by authorities cleaning the road after a storm. One opened can of beer and several unopened cans were spotted in Evans vehicle. A portable intoxilyzer indicated that Evans had consumed alcohol. She was taken to the station and more than one hour after her arrest she was given a BAC test on the Intoxilyzer 8000. Evans was convicted of DUI First Offense in the Justice Court of Monroe County. A trial de novo was had in the Circuit Court of Monroe County and again Evans was found guilty. Prior to trial, the state moved to exclude the testimony of Rosenhan, an expert witness for the defense. Rosenhan was to testify to the absorption rate of alcohol. Evans wanted to show that while her BAC level was .09% one hour after arrest, while she was driving the BAC level would have been below the legal limit. The trial court excluded the testimony which was proffered. The court ruled that pursuant to *Porter v. State,* 749 So.2d 250 (Miss.App. August 24, 1999), the defense was prohibited from introducing evidence of alcohol consumption, as this was a per se DUI violation. The case was appealed and the Court of Appeals reversed and remanded for a new trial on October 28, 2008. The state request certiorari which was granted.

ISSUES

The court examined whether the Court of Appeals erred in the application of the *Porter* case, and whether Rosenhan was properly qualified as an expert.

HOLDING

First, the court examined the Circuit Court's decision to rely on *Porter* in excluding Rosenhan's testimony. The Circuit Court accepted the states interpretation that the defense is prohibited from putting on evidence of alcohol consumption in a per se DUI case. The court held that *Porter* is not controlling in this case. In this case, Evans was attempting to show that her BAC level was not over the legal limit while she was operating her vehicle. She was not attempting to show that she was not intoxicated. Therefore, *Porter* is not controlling and the Court of Appeals was correct in remanding this for a new hearing.

Lastly, the court examined whether the Court of Appeals was correct in determining that Rosenhan was an expert in his field. The court noted that the trial judge did not make any findings on this issue and it was error for the Court of Appeals to so find. The decision of the Court of Appeals to reverse and remand was affirmed.

KITCHENS, JUSTICE, CONCURRING IN RESULT ONLY

Kitchens concurred in result but wrote separately to argue that the majority erred in relying on the *Porter* case as authority.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO58995.pdf

January 28, 2010

NO. 2008-KA-01405-SCT

MAURICE PRUITT
v.
STATE OF MISSISSIPPI

NATURE OF THE CASE: CRIMINAL - FELONY - MANSLAUGHTER

SENTENCED TO TWENTY YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS

TRIAL JUDGE: HON. BILLY JOE LANDRUM
COURT FROM WHICH APPEALED: JONES COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANT: BENJAMIN ALLEN SUBER, LESLIE S. LEE
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: BILLY L. GORE
DISTRICT ATTORNEY: ANTHONY J. BUCKLEY

RANDOLPH, JUSTICE, FOR THE COURT

VOTES: WALLER, C.J., CARLSON, P.J., DICKINSON, LAMAR, KITCHENS, CHANDLER AND PIERCE, JJ., CONCUR. GRAVES, P.J., CONCURS IN RESULT ONLY

FACTS

Pruitt was indicted for the murder of McMillian and the aggravated assault of Plummer. The incident occurred when Pruitt shot the men outside the American Legion Hut in Laurel. Conflicting testimony was had about whether McMillian had something hidden in his hand and whether he even had a weapon. Pruitt testified in his own defense and claimed that he acted in self-defense. Pruitt was convicted of manslaughter and sentenced to twenty years.

ISSUES

On appeal, Pruitt argues the weight and sufficiency of the evidence.

HOLDING

First, Pruitt argues that the evidence was not sufficient to show manslaughter because he acted in self-defense. The court reviewed the evidence in a "light most favorable to the state" and found that Pruitt exercised deadly force without deadly force being used against him. The jury decision was not unreasonable.

In looking at the weight of the evidence, the court held that allowing the verdict to stand did not sanction an unconscionable injustice. Therefore, the conviction and sentence was affirmed.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO61033.pdf

March 4, 2010

NO. 2008-KA-01457-SCT

DAVID ABERNATHY
v.
STATE OF MISSISSIPPI

NATURE OF THE CASE: CRIMINAL - FELONY - SEXUAL BATTERY
DISPOSITION: AFFIRMED

TRIAL JUDGE: HON. SAMAC S. RICHARDSON
COURT FROM WHICH APPEALED: RANKIN COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: JOSEPH PATRICK FRASCOGNA
ATTORNEYS FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: LAURA HOGAN TEDDER
DISTRICT ATTORNEY: MICHAEL GUEST

PIERCE, FOR THE COURT

VOTES: CARLSON, P.J., DICKINSON, RANDOLPH AND LAMAR, JJ., CONCUR. GRAVES, P.J., DISSENTS WITH SEPARATE WRITTEN OPINION JOINED BY WALLER, C.J., KITCHENS AND CHANDLER, JJ.

FACTS

Abernathy was indicted for the sexual battery of Tammy. The alleged battery occurred at the home of Justin and Jennifer, mutual friends who allowed both Abernathy and Tammy to sleep that night at their home. The four cooked a meal and had beer that evening. Tammy went to bed early because she did not feel well. She testified that she has suffered from migraines since an early age. She alternatively referred to them as "headaches" and "migraines." Tammy testified that after Justin and Jennifer went to bed, Abernathy entered her room and got on top of her. Abernathy removed her underwear and placed his finger inside her. She further testified that Abernathy touched her on other parts of her body. Jennifer testified that she and Tammy had asked Abernathy to not enter Tammy's

room. At trial, the defense had Dr. Katz in the courtroom as an expert on the issue of migraines. The trial judge ruled that the testimony of Dr. Katz was not relevant because there was no evidence that Tammy suffered from migraines. Abernathy was convicted and sentenced to thirty years with twenty suspended. He moved for a JNOV which was denied.

ISSUES

The court examined whether it was error to exclude the testimony of Dr. Katz and whether the evidence was sufficient to support the verdict.

HOLDING

First, the court examined the exclusion of the testimony of Dr. Katz. The court held that because the defense did not proffer the testimony of Dr. Katz after the trial judge held it to be not relevant, the court was unable to hold the trial judge in error.

Lastly, the court examined the sufficiency of the evidence. The court held that this was basically a factual dispute to be resolved by the jury. The jury found against Abernathy and the court held the assignment to be without merit.

GRAVES, PRESIDING JUSTICE, DISSENTING:

Graves would disagree with the majority's finding that Abernathy failed to make a sufficient proffer concerning Dr. Katz's testimony; he would conclude that Abernathy made an adequate proffer, satisfying the purpose of Rule 103. In addition, he would conclude that the trial court abused its discretion in finding Dr. Katz's testimony irrelevant. Accordingly, he would reverse and remand this case for a new trial with instructions to the trial court to admit Dr. Katz's testimony.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO59535.pdf

NO. 2008-KA-00684-SCT

CAROLYN MARIE BARNES
v.
STATE OF MISSISSIPPI

NATURE OF THE CASE: CRIMINAL - FELONY - EMBEZZLEMENT
DISPOSITION: AFFIRMED

TRIAL JUDGE: HON. FRANK G. VOLLOR
COURT FROM WHICH APPEALED: WARREN COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANT: OFFICE OF INDIGENT APPEALS
BY: ERIN ELIZABETH PRIDGEN, TONI DEMETRESSE TERRETT, LESLIE S. LEE
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL

BY: DEIRDRE McCRORY

GRAVES, PRESIDING JUSTICE, FOR THE COURT:

VOTES: WALLER, C.J., CARLSON, P.J., DICKINSON, RANDOLPH, LAMAR, KITCHENS, CHANDLER AND PIERCE, JJ., CONCUR.

FACTS

Barnes worked as a caregiver for Montague. She drove Montague and performed errands for her. Montague asked Barnes to deposit $3000 into her daughters account. Later that day Montague took a nap and dismissed Barnes for the day. After Barnes left, someone entered Montague's room and attempted to suffocate her with a pillow. Montague went limp and the person removed the gold rings from Montague and took her wallet containing $300 and credit cards. Montague said that she could not identify her attacker but that the attacker wore a blue shirt with a white stripe. Investigators obtained the surveillance tape from the bank where Barnes was supposed to make the deposit. The tape showed Barnes enter the bank and then do nothing. She was wearing a blue shirt with a white stripe. Barnes never returned to work for Montague. She was indicted for embezzlement and robbery. The jury convicted her of embezzlement.

ISSUES

The court examined whether the trial court erred in admitting Barnes statements made during interrogation and examined the weight of the evidence.

HOLDING

The court first examined Barnes statements during her interview with police. Officers testified that Barnes was not in custody at the time of the statements. However, during the interview she made contradictory statements. At that time, she was read her *Miranda* rights. Barnes argued that she asserted her rights to counsel multiple times. The trial court held the statements to be free and voluntary. The court held that Barnes was advised of her rights and knowingly waived those rights. She failed to make an unequivocal request for counsel and therefore the issue was without merit.

Finally, the court examined the weight of the evidence. After the conviction, Barnes moved for a new trial. The court examined all of the evidence and found that Barnes failed to establish that the verdict was contrary to the weight of the evidence. This issue was also without merit. The conviction and sentence of ten years in custody was affirmed.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO61704.pdf

March 25, 2010

NO. 2008-KA-00409-SCT

FERNANDO MARTINEZ PARKER a/k/a TAL
v.
STATE OF MISSISSIPPI

NATURE OF THE CASE: CRIMINAL - FELONY - DISPOSITION: AFFIRMED; REMANDED FOR RESENTENCING AS TO COUNT II -

TRIAL JUDGE: HON. KENNETH L. THOMAS
COURT FROM WHICH APPEALED: COAHOMA COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: KELSEY LEVOIL RUSHING
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: DEIRDRE McCRORY
DISTRICT ATTORNEY: LAURENCE Y. MELLEN

PIERCE, JUSTICE, FOR THE COURT

VOTES: WALLER, C.J., CARLSON, P.J., DICKINSON, RANDOLPH, LAMAR, KITCHENS AND CHANDLER, JJ., CONCUR. GRAVES, P.J., CONCURS IN RESULT ONLY

FACTS

Jarvis Moore, Justin Moore and two other students at Coahoma Community College walked from their dorm to another dorm to borrow a video game. A verbal altercation broke out between the four and a group on a second floor balcony. According to testimony, Parker, on the balcony, pulled out a gun and began firing. Jarvis died and Justin was wounded. Witnesses testified that Parker aimed directly at Jarvis when he fired. Parker gave a written statement admitting to firing the weapon but said he did so in self-defense. Parker was indicted and convicted for possession of a weapon on educational property, murder, and aggravated assault. Parker was sentenced to life without parole for the murder of Jarvis Moore, three years for possession of a firearm on educational property, and fifteen years for aggravated assault of Justin Moore. Aggrieved, Parker appeals his conviction and sentence.

ISSUES

Parker asserts the following six errors on appeal:

I. Whether the Trial Court Illegally Imposed a Sentence of Life Without Parole for Parker's Murder Conviction; II. Whether the Trial Court Subjected Parker to Double Jeopardy; III. Whether the Trial Court Erred by Failing to Order a Competency Hearing; IV. Whether the Trial Court Erred by Denying Parker's Motions for Directed Verdict; V. Whether Parker's Trial Counsel Rendered Ineffective Assistance of Counsel; and VI. Whether Parker Is Entitled to Relief Based on Cumulative Error.

HOLDING

First, Parker argues that he was illegally sentenced to life without parole. The court agreed and found that according to the statute, Parker should have been sentenced to no more than life. Further, the court addressed the State's argument that under section 47-7-3. The Court of Appeals has interpreted this statute to mean that "Mississippi has abolished parole for crimes occurring after June 30, 1995." The court held that Section 47-7-3 applies only to the internal operating procedures of the Department of Corrections and the prisons and does not affect a judge's sentencing prerogative under the criminal statutes. Thus, the Court of Appeals' interpretation of Section 47-7-3 is incorrect because the statute does not "abolish parole."

Next, Parker argues that he was subjected to double jeopardy because the crimes capital murder and possession of a weapon on educational property contain the same elements and that possession is a lesser included offense of capital murder. Needless to say, the court did not buy this argument as each crime is separate and distinct and he was not tried twice for the same offense.

Next, Parker argues that the court erred in not ordering a mental exam. Parker argues that the court never raised an issue of his competency as he believes is required. Parker claims that his competency issues related to the time of the crime and not at the time of trial. Parker's argument is flawed in that competency at the time of the crime would require an insanity defense and not be something for a competency hearing at trial to determine. Also, the rule only requires the court to order an exam if it has "reasonable grounds" to do so. Parker fails to allege any facts to show that the court had "reasonable grounds" to order a competency hearing.

Next, Parker argues that the court erred in denying his motion for a directed verdict. Parker argues that witnesses against him had something to gain in getting him convicted. However, neither witness was a suspect in the crime. Also, Parker says that the state did not prove all of the elements of the crime. The court examined the elements and determined that they were met in this case and it was sufficient to support the verdict.

Next, Parker alleges ineffective assistance of counsel. The court decided to address this claim on direct appeal because the elements could be determined from the record. The court examined the allegations of ineffective conduct cited by Parker and found them to be without merit. However, the court did agree that Parker was improperly sentenced and instructed that he be properly sentenced on remand. Also, the court found that the failure of counsel to make post-trial motions was error. However, Parker failed to show how failure to make these motions prejudiced him. Therefore, the allegation is also without merit.

Finally, Parker argues that he is entitled to reversal because of cumulative error. However, the court found that in examining all of the issues none rose to the level of reversible error. The conviction was affirmed and the case was remanded for resentencing.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO61435.pdf

NO. 2009-KA-00327-SCT

IVAN RUSSELL MCCLELLAN

v.
STATE OF MISSISSIPPI

NATURE OF THE CASE: CRIMINAL- FELONY
DISPOSITION: AFFIRMED - 03/25/2010

TRIAL JUDGE: HON. JAMES T. KITCHENS, JR.
COURT FROM WHICH APPEALED: LOWNDES COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANT: OFFICE OF INDIGENT APPEALS
BY: GEORGE T. HOLMES, LESLIE S. LEE, GARY GOODWIN
ATTORNEYS FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: LADONNA C. HOLLAND
DISTRICT ATTORNEY: FORREST ALLGOOD

KITCHENS, JUSTICE, FOR THE COURT

VOTES: WALLER, C.J., CARLSON AND GRAVES, P.JJ., DICKINSON, RANDOLPH, LAMAR, CHANDLER AND PIERCE JJ., CONCUR

FACTS

The Columbus Police Department was notified of the purchase of a large quantity of pseudoephedrine from Fred's Dollar Store. The purchase was made by a man and woman driving a blue Mustang with Alabama tags and using the identification of Ivan McClellan and Katina McGee. A deputy spotted a vehicle matching the description and began to follow the vehicle. The deputy followed the pair to several additional pharmacies where they made additional purchases of the same drug. The pair was pulled over and gave consent to search the vehicle. In addition to the large quantity of pseudoephedrine, several other items were discovered which were precursor ingredients to methamphetamine production. The items included lithium batteries, lighter fluid, and drain opener. McClellan was indicted as an habitual offender to possessing more than 250 doses of pseudoephedrine and possessing methamphetamine precursors. He was convicted and sentenced to sentences of thirty and five years to run concurrently.

ISSUES

McClellan raises four issues on appeal: (1) whether there was an illegal search, requiring exclusion of (A) the items found in the car and (B) his confession to police, (2) whether the verdict is supported by the weight of the evidence, (3) whether the trial court allowed improper impeachment evidence, and (4) whether merger prohibited prosecution for both possession of precursors and possession of more than 250 dosage units of pseudoephedrine.

HOLDING

First, McClellan argues that the initial stop of his vehicle was made without sufficient probable cause because the description of the vehicle was vague. Here, the court held that the

description was sufficient to identify the vehicle and cited case law that was extremely similar to this case. Therefore, it was not error to admit the seized items into evidence After McClellan was Mirandized, he gave a statement to police that he did in fact intend to make methamphetamine with the seized items. At trial, he moved to suppress this statement. Because McClellan made his statements after being arrested and read his rights, there was no error in admitting the statement into evidence.

Next, McClellan argues the weight of the evidence. The court reviewed the evidence and noted that McClellan owned the vehicle, made incriminating statements after being read his rights, and the contraband was found in his vehicle. This issue is without merit.

Next, McClellan argues that the trial court decision to allow evidence of a prior burglary conviction as impeachment if McClellan decided to testify, left him with the inability to mount a defense. Here, McClellan failed to proffer his testimony into the record. Therefore, he was procedurally barred from raising this issue on appeal.

Finally, McClellan argues that the charge of possession of pseudoephedrine merges with the possession of precursors and that he could only be convicted of one or the other. The court held that the appropriate test is whether the crimes contain different elements. Here, because the state did not use pseudoephedrine as one of the precursor items, the offenses were indeed separate and McClellan was properly charged and convicted of one crime. The sentence and conviction was affirmed.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO62233.pdf

NO. 2007-CT-02016-SCT

VINCENT CARNELL HUDSON a/k/a SLIM
v.
STATE OF MISSISSIPPI

NATURE OF THE CASE: CRIMINAL - FELONY - POSSESSION OF COCAINE
DISPOSITION: REVERSED AND RENDERED

ON WRIT OF CERTIORARI
TRIAL JUDGE: HON. C. E. MORGAN, III
COURT FROM WHICH APPEALED: WINSTON COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANT: OFFICE OF INDIGENT APPEALS
BY: PHILLIP W. BROADHEAD, LESLIE S. LEE
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: LISA LYNN BLOUNT
DISTRICT ATTORNEY: DOUG EVANS

WALLER, CHIEF JUSTICE, FOR THE COURT

VOTES: CARLSON AND GRAVES, P.JJ., DICKINSON, LAMAR AND KITCHENS, JJ., CONCUR. RANDOLPH, J., DISSENTS WITH SEPARATE WRITTEN OPINION JOINED BY CHANDLER AND PIERCE, JJ.

FACTS

Vincent was a passenger in a car being driven by his brother, Hillute. The vehicle was pulled over for speeding. Vincent was eating chicken and drinking a beer when the vehicle was pulled over. Officers ran a background check on Hillute and found an outstanding warrant. He was arrested and marijuana was found on his person. Officers also testified that they observed Vincent looking back at the patrol car and reaching toward the back seat. Vincent was arrested for having an open container. A search of the vehicle found another small amount of marijuana and a bag containing other illegal drugs. Vincent's clothing was taken and sent to the crime lab where "trace" amounts of cocaine were found. Vincent was indicted for possession of the drugs found in the bag and for possession of the "trace" amounts of cocaine. After a trial, Vincent was acquitted of the charges related to possession of the bag of drugs. However, he was convicted of possession of "trace" amounts of cocaine. Because he was a habitual offender, Vincent was sentenced to life without parole.

ISSUE

The sole issue examined by the court was whether there was sufficient evidence to convict Vincent of possession of cocaine.

HOLDING

The state argues that it proved that Vincent owned the clothing, the clothing contained cocaine, and therefore, a juror could infer that Vincent knew the clothes contained cocaine. Vincent argues that the state did not prove that he knew his clothes contained a trace amount of cocaine and therefore, the state did not show that Vincent knew he was in possession of cocaine. The court held that possession of a trace amount is enough to show possession. However, the state must also show that Vincent knew that he possessed the trace amounts of cocaine. Here, the state failed. The prosecution adduced no evidence that Vincent knew that cocaine was in his clothing. Because of the lack of evidence that Vincent knew about the cocaine, the court reversed the unanimous decision of the Court of Appeals and rendered the conviction.

RANDOLPH, JUSTICE, DISSENTING:

In dissent, Randolph would affirm the conviction because a rational trier of fact could have found the essential elements of the crime.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO61747.pdf

April 1, 2010

NO. 2008-KA-02129-SCT

NICKEY WILLIAMS
v.
STATE OF MISSISSIPPI

NATURE OF THE CASE: CRIMINAL - FELONY - SEXUAL BATTERY

DISPOSITION: COUNT I: AFFIRMED; COUNT II: REVERSED AND RENDERED

TRIAL JUDGE: HON. JAMES SETH ANDREW POUNDS
COURT FROM WHICH APPEALED: LEE COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANT: OFFICE OF INDIGENT APPEALS
BY: GEORGE T. HOLMES, LESLIE S. LEE
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: LADONNA C. HOLLAND
DISTRICT ATTORNEY: JOHN RICHARD YOUNG

KITCHENS, JUSTICE, FOR THE COURT

VOTES: WALLER, C.J., CARLSON, P.J., DICKINSON AND LAMAR, JJ., CONCUR. GRAVES, P.J., CONCURS IN PART AND DISSENTS IN PART WITH SEPARATE WRITTEN OPINION JOINED BY RANDOLPH, CHANDLER AND PIERCE, JJ.

FACTS

Nickey Williams was convicted of two counts of sexual battery, the first against his daughter, Jane, and the second against his daughter, Ann. At the time of the offenses, Jane was four years old and Ann was less than a year old. Williams was sentenced to thirty years' incarceration on the first count and twenty years' incarceration on the second count with ten years suspended. The trial court ordered that those sentences run consecutively. Finding that there was insufficient evidence to support a guilty verdict for sexual battery of the younger daughter, the court reversed the conviction on the second count and rendered judgment in favor of the defendant, vacating the sentence on the second count. As for the conviction for sexual battery of the older daughter, the court found no reversible error and affirmed.

ISSUES

Williams raises several issues on appeal, arguing that (1) there was insufficient evidence to support a guilty verdict on the second sexual battery charge involving his younger daughter, (2) the two counts should have been severed, (3) the trial court erred in excluding testimony that the defendant was a good father, (4) the trial court erred in allowing the State to introduce certain hearsay testimony, (5) the jury was tainted by misconduct, (6) the verdict in the first count involving the older daughter was against the weight of the evidence, and (7) the trial court's refusal to grant the defendant's proposed jury instruction about child testimony entitles him to a new trial.

HOLDING

The court first addressed the sufficiency of the evidence supporting the second count. In that count, Dr. Marcy did not express his medical opinion that Ann had been sexually abused "to a reasonable degree of medical certainty," even though he did so concerning Jane. Additionally, in Jane's case, her testimony and testimony from her foster mother and counselor provided substantial support for Dr. Marcy's findings. With Ann, there was no evidence to support the conviction for sexual battery other than Dr. Marcy's testimony.

Reviewing the evidence in the light most favorable to the prosecution, the court found that the evidence was insufficient to support a conviction for the sexual battery of Ann beyond a reasonable doubt. Moreover, the evidence, which was entirely circumstantial with regard to the charge concerning the younger child, Ann, fell far short of the applicable standard of proof of guilt beyond a reasonable doubt and to the exclusion of every reasonable hypothesis consistent with innocence. Therefore, the court reversed and rendered the conviction of Williams on the sexual battery charge related to Ann.

Next, the court addressed Williams' motion for severance. Williams' waited until the morning of trial to raise his motion. The court held that it is not error to deny an untimely motion to sever, particularly when there have been no new developments between arraignment and the time of the motion that would have given cause for the severance.

Next, the court addressed the exclusion of defense evidence. Williams argued that he should have been allowed to put on evidence that he was a good father. He had five character witnesses lined up. Two testified and the state objected when the third began to testify. The court refused to allow this line of questioning because the testimony was not provided to the state in discovery. Here, the judge did not abuse his discretion.

Next, Williams argues that the trial court erred in admitting hearsay evidence. Specifically Williams cited the testimony of persons that had spoken to the children about the abuse. The trial court held the statements to be admissible under the "tender years" exception. The court found that this was not an abuse of the court's discretion. Further, Williams objected to the testimony of the doctor who interviewed and examined the children. However, the doctor did not testify about any statements made by the children, therefore this issue is without merit.

Next, Williams argues juror misconduct. Williams argues that a juror did not respond honestly during voir dire about knowing a states witness. However, the juror was questioned about "close personal friends" and the juror discovered at trial that the witness was an acquaintance. This was not an improper response.

Next, Williams argues that a jury instruction regarding child testimony was improperly denied. However, the court has held that failure to give this type instruction is not error. This issue is without merit.

Finally, Williams argues the weight of the evidence. After reviewing the evidence, the court found that it was not error to refuse to grant a new trial. Given that the State failed to present

sufficient evidence to support the jury's verdict that Williams had sexually abused his daughter, Ann, that conviction is reversed and rendered. However, the conviction related to the alleged sexual abuse of Jane (Count I) is not against the overwhelming weight of the evidence, and no error related to that charge was committed at trial. Accordingly, the conviction of Williams for the sexual abuse of Jane and the sentence of thirty years in the custody of the Mississippi Department of Corrections are affirmed.

GRAVES, CONCURRING IN PART AND DISSENTING IN PART

Graves would dissent regarding issue "one" because there was sufficient evidence to support the jury's verdict that Williams had sexually battered Ann. Accordingly, he would affirm the judgment of the trial court, convicting Williams on both counts of sexual battery.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO62218.pdf

SCT POST-CONVICTION CASES:

November 19, 2009

NO. 2008-CP-01780-SCT

CHRISTOPHER WAYNE WALTERS
v.
STATE OF MISSISSIPPI

NATURE OF THE CASE: CIVIL - POST CONVICTION RELIEF
DISPOSITION: AFFIRMED

TRIAL JUDGE: HON. LESTER F. WILLIAMSON, JR.
COURT FROM WHICH APPEALED: LAUDERDALE COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: CHRISTOPHER WAYNE WALTERS (PRO SE)
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: JOHN R. HENRY, JR.
E. J. (BILBO) MITCHELL

RANDOLPH, JUSTICE, FOR THE COURT

VOTES: WALLER, C.J., CARLSON, P.J., DICKINSON, LAMAR, KITCHENS, CHANDLER AND PIERCE, JJ., CONCUR. GRAVES, P.J., CONCURS IN RESULT ONLY

FACTS

Walters pleaded guilty to possession and distribution of a controlled substance. He was sentenced to fifteen years with all but one day suspended. He was arrested while on post-release

supervision for grand larceny. His probation was revoked and he was ordered to serve the remainder of the fifteen-year sentence. In exchange for agreeing to this, the grand larceny charge was dismissed. When the grand larceny charge was dismissed, Walters filed a "Motion to Reinstate Probation." The circuit court denied the motion and Walters appealed.

ISSUE

The court examined whether the circuit court erred in denying Walters's motion.

HOLDING

The court originally looked at jurisdiction in this case. The circuit court denied Walters's motion based upon lack of jurisdiction. The court found this to be in error and held that the circuit court should have treated the motion as a PCR motion. Denial for lack of jurisdiction was improper. However, the court agreed that denial of the motion was proper but for other reasons. Walters entered an agreement that he had violated probation in exchange for dismissal of the grand larceny charges. He cannot now use the dismissal of the charges to seek to reinstate his probation. Therefore, the denial of the motion is affirmed but for different reasons.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO59827.pdf

April 1, 2010

NO. 2008-CT-00074-SCT

ROBERT H. JACKSON
v.
STATE OF MISSISSIPPI

NATURE OF THE CASE: CIVIL – POST-CONVICTION RELIEF
DISPOSITION: REVERSED AND REMANDED - 04/01/2010

ON WRIT OF CERTIORARI
TRIAL JUDGE: HON. ISADORE W. PATRICK, JR.
COURT FROM WHICH APPEALED: WARREN COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANT: PRO SE, WILLIAM B. BARDWELL, DAVID McCARTY
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: JOHN R. HENRY, JR.

WALLER, CHIEF JUSTICE, FOR THE COURT

VOTES: CARLSON AND GRAVES, P.JJ., DICKINSON, RANDOLPH, LAMAR, KITCHENS, CHANDLER AND PIERCE, JJ., CONCUR

FACTS

Robert H. Jackson was indicted for capital murder for killing Josephine Todd during the burglary of her home in Vicksburg, Mississippi, on June 4, 1979. Soon after his arrest, Jackson gave a statement to police, detailing the events surrounding the burglary. Jackson stated that he "had entered Mrs. Todd's Apartment, tied her hands, placed a cloth over her mouth, looked through the drawers in her apartment, had found some money, took Mrs. Todd's purse, removed [the] restraints from her hands and pulled [the] gag off [her] mouth and left through [the] front door of [the] apartment." Mrs. Todd died from asphyxiation.

This certiorari review arises from the Warren County Circuit Court's decision to dismiss Robert H. Jackson's most recent motion for post-conviction relief. The Court of Appeals affirmed that decision.

This case has a lengthy and confusing procedural history stemming from multiple motions and applications for post-conviction relief filed by Jackson, proceeding pro se. In fact, this is the fourth time in which the disposition of one of Jackson's PCR motions has been appealed to the SCT. The Court of Appeals held that the trial court was without jurisdiction to entertain Jackson's 2007 PCR motion and that the motion was procedurally barred as an impermissible successive writ. Finding that the trial court had jurisdiction to decide Jackson's motion, and that the motion is excepted from the procedural bars, the SCT reversed.

ISSUES

The court examined three issues; (1) Whether the trial court had jurisdiction over Jackson's 2007 PCR motion, (2) Whether the 2007 PCR motion was procedurally barred., and (3) Whether the indictment was substantively defective.

HOLDING

First, the court examined whether the trial court had jurisdiction over the PCR motion. In reviewing the procedural history of the case, the court noted that Jackson originally pled guilty. Therefore, no direct appeal was had of this case. However, Jackson later filed several PCR motions initially seeking leave of the Supreme Court to proceed. The Supreme Court denied these as successive writs. These denials were erroneous in that the Supreme Court did not have original jurisdiction in this case, the trial court did. In denying the 2007 PCR motion, the trial court erroneously relied upon the erroneous Supreme Court decisions assuming jurisdiction. Therefore, the trial court had original jurisdiction in this case.

Next, the court addressed whether the PCR motion was procedurally barred. The court found the indictment in this case to be deficient in that it omitted the phrase "without authority of law." Further, capital murder indictments that are predicated upon the underlying felony of burglary must assert with specificity the felony that compromises burglary. See *State v. Berryhill*, 703 So.2d 250 (Miss. 1997). This indictment was deficient for both reasons. However, Jackson must now overcome the procedural bars to his motion. Generally a guilty plea waives defects in the indictment. However, an indictment that fails to charge a necessary element of the crime is deemed "jurisdictional, and

hence, not waivable." The court went on to address whether the motion was procedurally barred because the issue of the indictment was not first raised in the trial court and whether it was barred as a successive writ. The motion should be barred unless it meets one of the exceptions to the bar. Here, Jackson's motion should be barred. However, in *Luckett v. State*, 582 So.2d 428 (Miss. 1991), the court held that the denial of due process merits an exception from the procedural bar. However, this argument is contingent upon the finding that the indictment in this case is substantively defective.

Finally, the court addressed whether the indictment was in fact substantively defective. The indictment in this case wholly fails to meet the *Berryhill* standard of detailing the underlying burglary offense and therefore, did not put Jackson on proper notice of the crime of capital murder. Next, the court looked to see if the indictment sufficiently charged Jackson with simple murder. The 1979 indictment did not charge Jackson with committing the offense "without authority of law" or even "unlawfully." Therefore, the indictment did not charge Jackson with either simple murder or manslaughter. In fact, the indictment in this case does not charge Jackson with any crime. Jackson's conviction is reversed and cannot be remanded for new trial or re-sentencing.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO62205.pdf

U.S. SUPREME COURT NOTES:

Corcoran v. Levenhagen, No. 08-10495 (October 20, 2009). The U.S. Supreme Court held per curiam, in a capital habeas matter, that the 7th Circuit erred in reversing a district court's order granting habeas relief. An Indiana jury convicted Joseph Corcoran of four counts of murder. Corcoran was sentenced to death. After Corcoran's challenges to his sentence in the Indiana courts failed, he sought federal habeas relief. The federal district court granted habeas relief on Corcoran's claim of a Sixth Amendment violation, and ordered the state court to resentence Corcoran to a penalty other than death. The district court did not address Corcoran's other arguments relating to his sentence, noting that they were "rendered moot" by the order that Corcoran be resentenced. The 7th Circuit reversed. Without mentioning Corcoran's other sentencing claims, the Seventh Circuit remanded "with instructions to deny the writ," stating that "Indiana is at liberty to reinstate the death penalty." The Supreme Court vacated the order and remanded. The 7th Circuit erred in disposing of petitioner's remaining, unaddressed challenges to his death sentence without explanation of any sort.

The read the full opinion, click here:
http://www.supremecourt.gov/opinions/09pdf/08-10495.pdf

Wong v. Belmontes, No. 08-1263 (November 16, 2009). The U.S. Supreme Court held per curiam, in a capital habeas proceeding, that the 9th Circuit erred in granting habeas relief. Fernando Belmontes was convicted of murder during the course of a burglary. The 9th Circuit granted federal habeas relief, but the Supreme Court remanded. On remand, the 9th Circuit again ruled for Belmontes, this time finding that Belmontes suffered ineffective assistance of counsel during the sentencing phase of his trial. The district court had previously denied relief on that ground, finding that counsel had performed deficiently, but that Belmontes could not establish prejudice. The Supreme Court again reversed the 9th Circuit opinion. Defense counsel had to proceed cautiously during sentencing to prevent evidence of a prior murder by the defendant from being introduced.

Without deciding whether counsel's careful tailoring of mitigation evidence was ineffective, Belmontes can not show prejudice. Petitioner failed to show a reasonable probability that the jury would have rejected a capital sentence after it weighed the entire body of mitigating evidence against the entire body of aggravating evidence.

To read the full opinion, click here:
http://www.supremecourt.gov/opinions/09pdf/08-1263.pdf

Porter v. McCollum, No. 08–10537 (November 30, 2009). The U.S. Supreme Court held per curiam, in a capital habeas proceeding, that the 11th Circuit erred in reversing the district court's granting of habeas relief. George Porter was convicted of two counts of first-degree murder for the 1986 shooting of his former girlfriend and her boyfriend. He was sentenced to death on the first count but not the second. A wounded and decorated Korean War veteran, Porter represented himself, with standby counsel, for most of the pretrial proceedings and during the beginning of his trial. Near the completion of the State's case in chief, Porter pleaded guilty. He thereafter changed his mind about representing himself, and his standby counsel was appointed as his counsel for the penalty phase. The defense put on only one witness, Porter's ex-wife, and read an excerpt from a deposition. In 1995, Porter filed a state PCR, claiming his penalty-phase counsel failed to investigate and present mitigating evidence. During an evidentiary hearing, Porter presented extensive mitigating evidence, all of which was apparently unknown to his penalty-phase counsel. The new evidence described his abusive childhood, his heroic military service and the trauma he suffered because of it, his long-term substance abuse, and his impaired mental health and mental capacity. The trial judge found Porter had not be prejudiced by the omission of this evidence. The Florida Supreme Court affirmed. The federal district court did find prejudice. The Eleventh Circuit reversed. It held the district court had failed to appropriately defer to the state court's factual findings. The Supreme Court reversed. The Court held it was objectively unreasonable for a state court to conclude that there was no reasonable probability the sentence would have been different if the sentencing judge and jury had heard the significant mitigation evidence that petitioner's counsel neither uncovered nor presented.

To read the full opinion, click here:
http://www.supremecourt.gov/opinions/09pdf/08-10537.pdf

Michigan v. Fisher, No. 09–91 (December 7, 2009). The U.S. Supreme Court held per curiam, that Michigan state courts erred in suppressing an officer's testimony because of unconstitutional, warrantless entry into defendant's house. Police responded to a disturbance and found a household in chaos. Through a window, the officers could see respondent, Jeremy Fisher, inside the house, screaming and throwing things. Police knocked, but Fisher told them to go get a warrant. An officer ventured part-way through the door of the house and Fisher pointed a rifle at him. The state court suppress the officer's statement, finding his entry into the home violated the 4th Amendment. The appellate court affirmed, but the Supreme Court granted cert. The Court held the officer did not violate the 4th Amendment because he was responding to a report of a disturbance and encountered a tumultuous situation in the house, which justified a warrantless search under the emergency aid exception.

To read the full opinion, click here:
http://www.supremecourt.gov/opinions/09pdf/09-91.pdf

Beard v. Kindler, No. 08-992 (December 8, 2009). The U.S. Supreme Court held unanimously that a state discretionary procedural rule can be an adequate state ground and thus bar federal habeas review. Joseph Kindler was convicted of homicide in Pennsylvania. He filed post conviction motions, but escaped confinement and fled to Canada before they could be heard. He was later captured and brought back in the country. Kindler attempted to reinstate his post conviction motions, but under Pennsylvania law, Kindler, by fleeing, had waived those motions. He sought and received federal habeas relief, but Pennsylvania appealed. The adequate and independent state ground doctrine says a federal court will not review a claim that a state court rejected under state law that is adequate to support the judgment and is independent of the federal question. The Court rejected Kindler's argument that a procedural rule, rather than a mandatory one, cannot be considered adequate.

To read the full opinion, click here:
http://www.supremecourt.gov/opinions/09pdf/08-992.pdf

Alvarez v. Smith, No. 08-351 (December 8, 2009). The U.S. Supreme Court unanimously held that the issue is moot where the state has returned property used to facilitate drug crimes and the underlying dispute as to ownership of the property has been resolved. Under the Illinois Drug Asset Forfeiture Procedure Act (DAFPA), owners of property not exceeding $20,000 in value, which is seized and subjected to a forfeiture action under state law may file a claim and require the state to show probable cause for the forfeiture. DAFPA does not require that a hearing be conducted prior to the statutory judicial forfeiture proceeding. Claimants filed a class action suit against the state's attorney and the superintendant of police, alleging DAFPA violated their Due Process rights because it lacks a prompt post-seizure hearing. The District Court granted a motion to dismiss, but the federal appellate court reversed and found that DAFPA's failure to provide a hearing prior to the statutory judicial forfeiture proceeding constituted a facial violation of the Due Process Clause. The Supreme Court held that the issue is moot. Since the state has returned the seized cars and cash (some was forfeited by the owners), there is no longer a case or controversy regarding ownership of the property. All that remains is a dispute over the meaning of the law, abstracted from any concrete actual or threatened harm, which does not fall within the Constitutional requirement for a case or controversy. Because the case became moot more through happenstance than through settlement, appellants have lost their equitable remedy of vacatur. The Court vacated the judgment from the appellate court.

To read the full opinion, click here:
http://www.supremecourt.gov/opinions/09pdf/08-351.pdf

McDaniel v. Brown, No. 08-559 (January 11, 2010). The U.S. Supreme Court held per curiam, in a capital habeas proceeding, that the 9th Circuit erred in affirming the district court grant of habeas relief. A Nevada jury convicted Troy Brown of rape. The evidence presented included DNA evidence matching respondent's DNA profile. Nevertheless, relying upon a report prepared by a DNA expert over 11 years after the trial, the federal district court applied the *Jackson v. Virginia* standard and granted the writ. The 9th Circuit affirmed and the Supreme Court reversed. The 9th Circuit's analysis failed to preserve the fact finder's role as weigher of the evidence by reviewing all of the evidence in the light most favorable to the prosecution, and it erred in finding a state court's resolution of petitioner's claim to be objectively unreasonable. Furthermore, Brown forfeited his claim that a prosecution expert incorrectly described the statistical implications of certain DNA evidence.

To read the full opinion, click here:
http://www.supremecourt.gov/opinions/09pdf/08-559.pdf

Smith v. Spisak, No. 08-724 (January 12, 2010). The U.S. Supreme Court unanimously held that a change in closing argument would not have had a substantial impact on defendant's case and the trial court's upholding of mitigation jury instructions was not an unreasonable application of law. Frank Spisak was convicted in 1983 of three murders and two attempted murders and sentenced to death. He subsequently filed for a writ of habeas corpus based on what he felt were faulty jury instructions and IAC. The district court rejected his petition. However, the 6th Circuit granted his petition and stayed his execution. The Supreme Court granted certiorari and reversed. The Court reasoned that jury instructions that allowed only those mitigating factors that were unanimously agreed upon by the jury to be considered in sentencing were constitutional and consistent with Supreme Court precedent. However, the Court found that the jury instructions, as laid out in the forms and explained by the trial court judge, mandated that each juror take into account all relevant evidence and determine whether the mitigating factors outweighed the aggravating factors. This balancing is distinguished from prior Court jury instruction precedent. Further, the Court found the defendant's counsel adequate in that a change to the closing argument would not have had a substantial impact on the outcome of the case and therefore was not an unreasonable application of the law.

To read the full opinion, click here:
http://www.supremecourt.gov/opinions/09pdf/08-724.pdf

Wellons v. Hall, No. 09-5731 (January 19, 2010). The U.S. Supreme Court held 5-4 that when a federal court denies habeas corpus, the court's opinion must unambiguously address the merits of the claimant's petition. Wellons was convicted of rape and murder in a Georgia trial court and sentenced to death. Defense counsel learned after the trial that the judge had not reported ex parte contacts with the jury. Some of the jurors, during or shortly after the penalty phase of the trial, had given the judge chocolate shaped as male genitalia and the bailiff chocolate shaped as female breasts. The state supreme court held that the claims were barred by res judicata and affirmed Wellons' conviction and sentence. Wellons petitioned for habeas corpus, but the federal district court found his claims to be procedurally barred, and the 11th Circuit affirmed. The Supreme Court vacated and remanded. Federal review was not barred when the state court declined to review the merits of Wellons' claim on the ground that it had already done so. The appellate court's opinion was ambiguous and did not properly address whether Wellons was entitled to habeas review on the merits of his appeal in which he sought discovery and an evidentiary hearing regarding the chocolate gifts.

To read the full opinion, click here:
http://www.supremecourt.gov/opinions/09pdf/09-5731.pdf

Presley v. Georgia, No 09-5270 (January 19, 2010). The U.S. Supreme Court held per curiam that the Sixth Amendment forbids a judge from closing a courtroom to the public during voir dire proceedings. Presley was convicted in a jury trial of a cocaine trafficking charge. During the trial, the judge excluded the public during voir dire of jurors, specifically Presley's uncle, for lack of courtroom space. Presley's counsel requested an accommodation, but the request was denied. The state supreme court upheld Presley's conviction. The U.S. Supreme Court reversed. The Court held that the public

should not have been excluded from the trial, especially not without consideration of alternative accommodations. The Sixth Amendment gives the accused in a criminal prosecution the right to a speedy and public trial. The right to a public trial also extends to the general public through the First Amendment, whether or not it is asserted. Courts must consider every reasonable alternative to closure to accommodate the public at criminal trials. Nothing in the record suggests that the public could not have been accommodated in this case.

To read the full opinion, click here:
http://www.supremecourt.gov/opinions/09pdf/09-5270.pdf

Kucana v. Holder, No. 08-911 (January 20, 2010). The U.S. Supreme Court unanimously held that the statute's proscription of judicial review applies only to decisions made by the Attorney General that were discretionary by statute. Agron Kucana is an Albanian emigrant who was summarily ordered to be deported after he slept through and missed his hearing with an immigration judge. After appealing and having the matter dismissed twice by the judge and twice by the Board of Immigration Appeals (BIA), Kucana appealed to the 7th Circuit, where the case was dismissed based on lack of jurisdiction. The federal statute states that no court shall have authority to review any decision within the discretionary powers of the Attorney General or the Department of Homeland Security. The 7th Circuit reasoned that, while the power to reopen is not directly within the discretion of the Attorney General, per the statute, the power to reopen administrative deportation proceedings fell within the Attorney General's discretion per administrative regulation and a previous court ruling. The federal appellate court denied review. The Supreme Court held that the statute's proscription of judicial review applies only to those decisions made by the Attorney General that were discretionary by statute. However, the Attorney General's discretionary determinations granted through administrative regulations are not exempt from judicial review. The Court reasoned that judicial review is an important safeguard in ensuring the correct legal disposition of deportation proceedings. Using a statutory analysis, the Court found that the Attorney General's discretion is only allowed as far as the statute grants. Furthermore, the Court has a long history of mandating judicial review of decisions denying the reopening of deportation proceedings. Finally, any ambiguous language found in an administrative agency's organic statute is read to allow judicial review, which can only be rebutted by clear and convincing evidence of legislative intent otherwise.

To read the full opinion, click here:
http://www.supremecourt.gov/opinions/09pdf/08-911.pdf

Wood v. Allen, No. 08-9156 (January 20, 2010). The U.S. Supreme Court held 7-2 that Alabama reasonably determined, based on the evidence produced at trial, that the defendant's trial counsel made a strategic decision to not introduce evidence of the defendant's mental deficiencies. Holly Wood was convicted of murder and sentenced to death. Five months prior to trial defense counsel had received a report that described the defendant's mental faculties as very low, but defense counsel did not investigate the defendant's mental state further for sentencing purposes. Limited evidence was submitted by the defense counsel during the sentencing phase. The district court granted the defendant's petition for habeas relief, and the 11th Circuit reversed. The Supreme Court found that evidence relied on by the state court shows that defendant's trial counsel read the report. Even if the decision could be questionable it was not unreasonable for the state court to conclude that after reading the report trial counsel would make a strategic decision to not investigate information

contained within the report and decide to not present information about defendant's mental deficiencies. Much of the evidence defendant relied on during the appeal, actually impacts whether trial counsel's decision was reasonable, which is not a question reached by the court.

To read the full opinion, click here:
http://www.supremecourt.gov/opinions/09pdf/08-9156.pdf

Briscoe v. Virginia, No. 07-11191 (January 25, 2010). The U.S. Supreme Court issued a per curiam decision vacating the judgment of the Virginia Supreme Court and remanding the case for further proceedings consistent with *Melendez-Diaz v. Massachusetts*. Mark Briscoe was arrested for possession of cocaine. At trial, he objected to the admission of analysis certificates used to prove that the substance he possessed was cocaine. Briscoe claimed the right to confront the forensic analysts that produced the certificates. Procedural safeguards in Virginia allow defendants to call forensic analysts as witnesses. Briscoe argued that the safeguard did not adequately satisfy his right to confront the witnesses against him as guaranteed in the Confrontation Clause. The Virginia Supreme Court held it did not need to determine whether the certificates were testimonial under *Crawford*. Testimonial statements subject to the Confrontation Clause will not be admissible in court unless the person who made the statement testifies in court and is subject to cross examination, or if the defense had a prior opportunity to cross examine the witness. The Supreme Court vacated the Virginia decision and remanded the case for proceedings consistent with *Melendez-Diaz*, in which the Court held that affidavits such as forensic analysis certificates are testimonial statements under *Crawford*. The Confrontation Clause requires the opportunity for cross examination regarding these statements.

To read the full opinion, click here:
http://www.supremecourt.gov/opinions/09pdf/07-11191.pdf

Wilkins v. Gaddy, No. 08-10914 (February 22, 2010). The U.S. Supreme Court held per curiam that petitioner stated a claim under § 1983 for use of excessive force. The Supreme Court previously held in *Hudson v. McMillian* that the use of excessive physical force against a prisoner may constitute cruel and unusual punishment even when the inmate does not suffer serious injury. In this case, the district court dismissed a prisoner's excessive force claim based entirely on its determination that his injuries were de minimus. This was in violation of *Hudson*, which determined that it is the maliciousness of the force used, rather than the injuries sustained that determine the validity of an excessive force claim. The Court explained that while the severity of injuries sustained can inform the inquiry as to whether the force was necessary or excessive, the dispositive issue is whether the force was used in good faith.

To read the full opinion, click here:
http://www.supremecourt.gov/opinions/09pdf/08-10914.pdf

Thaler v. Haynes, No. 09-273 (February 22, 2010). The U.S. Supreme Court held per curiam that there is no precedence requiring that a trial judge personally observe a prospective juror's demeanor during voir dire to accept a prosecutor's explanation for a peremptory challenge. Haynes was tried and convicted for the murder of a police officer in Texas and sentenced to death. Haynes appealed, arguing that the trial judge did not actually witness the voir dire and therefore could not have fairly evaluated a demeanor-based *Batson* objection Haynes made. The deciding judge had taken over the

case after the separate questioning of prospective jurors and when peremptory challenges were being made. The state appellate court affirmed. Habeas petitions were denied on the state level and by the federal district court. The 5th Circuit held that because it would necessarily be relying solely on a paper-based record, the factual inquiry requirement of *Batson* would be violated, therefore Haynes was entitled to a new trial. The Supreme Court reversed and remanded. The Court found that, although previous decisions may have emphasized the importance of a trial judge's observations, no previous Supreme Court case holds that a judge must personally observe and recall a juror's demeanor before accepting a prosecutor's explanation for a strike. This categorical rule upon which the 5th Circuit appeared to have relied had never been established.

To read the full opinion, click here:
http://www.supremecourt.gov/opinions/09pdf/09-273.pdf

Florida v. Powell, No. 08-1175 (February 24, 2010). The U.S. Supreme Court held 7-2 that advising a suspect of the right to talk to a lawyer before answering any law enforcement questions, and that these rights may be invoked at any time during the interview satisfies *Miranda*. Kevin Powell was charged with felon in possession of a firearm. Evidence included confessions concerning the defendant's possession and ownership of the gun. The state trial court found that the recitation concerning the right to an attorney before questioning was adequate and the defendant was convicted. The appellate court reversed, holding that the *Miranda* warnings were deficient under the Fifth Amendment. The Florida Supreme Court affirmed, finding that the warning was misleading because the temporal language used, stating Powell could talk to a lawyer before answering any of the officers' questions, suggested he could consult with an attorney only before the interrogation started. The Supreme Court reversed. The Court declined to declare a precise formulation required by *Miranda* and found that the different words used to advise Powell were sufficient because they communicated the same message. The Court reasoned that the term "before" merely conveyed that Powell's right to an attorney became effective before he answered any questions at all. Furthermore, nothing in the words used indicated that counsel's presence would be restricted after questioning commenced. The Court also held that it had jurisdiction to hear the case because there was no clear statement that the Florida decision was made on state grounds rather than based on federal constitutional precedent of *Miranda*.

To read the full opinion, click here:
http://www.supremecourt.gov/opinions/09pdf/08-1175.pdf

Maryland v. Shatzer, No. 08-680 (February 24, 2010). The U.S. Supreme Court unanimously held that when a suspect experiences a lapse in time of more than two weeks after invoking the right to counsel, statements by the suspect during a second interrogation should not be suppressed if the suspect voluntarily waives the right to counsel. Michael Blaine Shatzer, Sr. was charged with sexual abuse by a parent. In 2003, defendant was interviewed while in custody on an unrelated matter. Defendant invoked his right to counsel and all communications between him and detectives ceased. Defendant was again questioned about these events over two years after the initial interview. Defendant waived his right to counsel and agreed to speak with detectives during the second interview. Following the second interview and a polygraph examination, defendant filed a motion to suppress the statements based on *Edwards v. Arizona*. Edwards created a presumption that, once a suspect invokes the right to counsel, a waiver of these rights is presumed to be coerced unless

counsel is present or the suspect reinitiates communications himself. The trial court found defendant guilty and the Maryland Court of Appeals reversed the decision. The Supreme Court held that there was a significant break in custody because, although defendant returned to prison, the return was without the inherently compelling pressures of custodial interrogation. With a break in custody established, the court went on to hold that a 14 day interim period is satisfactory for purposes of *Edwards*. Because defendant's break in custody lasted more than two weeks, *Edwards* does not mandate suppression of defendant's statements from the second interview.

To read the full opinion, click here:
http://www.supremecourt.gov/opinions/09pdf/08-680.pdf

Johnson v. United States, No. 08-6925 (March 2, 2010). The U.S. Supreme Court held 7-2 that a defendant's prior conviction for a felony involving "intentionally touching" as an element does not qualify as a violent felony under the Armed Career Criminal Act. Johnson was pleaded guilty to possession of an armed weapon by a convicted felon. The Armed Career Criminal Act (ACCA) authorizes enhanced sentences for possession of an armed weapon by persons who have three previous convictions for a violent felony. Johnson challenged the determination that his felony conviction of simple battery, which involved an "intentional touching of another," constituted a violent felony. The ACCA defines "violent felony" as an offense including as an element the use of "physical force" against another. Therefore, Johnson's eligibility for enhanced sentencing under the ACCA was dependent on whether "intentional touching" constituted "physical force." The District Court found that it did, and enhanced Johnson's sentence under the ACCA. The Supreme Court held that "intentional touching" does not constitute "physical force" as intended by the ACCA. The court reasoned that while "intentional touching" was intended to mean any contact no matter how slight, "physical force" understood in the context of a definition of a "violent felony" should be understood to mean something greater than "intentional touching."

To read the full opinion, click here:
http://www.supremecourt.gov/opinions/09pdf/08-6925.pdf

Bloate v. United States, No 08-728 (March 8, 2010). The United States Supreme Court held 7-2 that the time granted to prepare pretrial motions is not automatically excludable from the 70-day statutory period. Taylor James Bloate was arrested on drug and felony firearm charges. He was indicted on August 24, 2006, which began the 70-day clock under the Federal Speedy Trial Act. On September 7, Bloate filed a motion to extend the deadline for submission of his pretrial motion, which was granted. On September 25, Bloate filed a waiver of pretrial motion, which was approved on October 4. Following several valid continuances, Bloate's trial was heard on March 5, 2007. Bloate was found guilty and sentenced to concurrent 30-year terms of imprisonment. The District Court held that the pretrial motion preparation time, September 7 to October 4, was automatically excludable under the Act, and denied the motion to dismiss for violation of the Speedy Trial Act. Petitioner appealed to the 8th Circuit, which affirmed. The United States Supreme Court reversed and remanded. The 28-day period from September 7 to October 4 was not automatically excludable from the 70-day period under the Speedy Trail Act. Such exclusion would only be allowed if the District Court had granted a continuance based on appropriate finding under the statute. While pretrial preparation is covered under the Act, pretrial motion delay is automatically excludable only from the time a pretrial motion

is filed through a specified hearing or disposition point. Therefore, time spent on pretrial preparation is not, under these circumstances, automatically excludable.

To read the full opinion, click here:
http://www.supremecourt.gov/opinions/09pdf/08-728.pdf

Berghuis v. Smith, No. 08-1402 (March 30, 2010). The U.S. Supreme Court unanimously held that courts are not required to apply any certain test or method to determine underrepresentation of minority jurors. The defendant failed to show that the court's first assignment order had any significant effect on the representation of African Americans on circuit court venires. Diapolis Smith, an African American, claimed that the court violated his Sixth Amendment right to trial by an impartial jury drawn from a fair cross section of the community after an all white jury convicted him of second-degree murder. Using absolute and comparative disparity tests to measure underrepresentation, the trial court found African Americans underrepresented on circuit court venires by either 1.28% or 15%. However, the trial court rejected Smith's fair-cross-section claim because evidence was insufficient to prove that the juror assignment order, or any other part of the jury selection process, had systematically excluded African Americans. The 6th Circuit reversed, ruling that courts should use the comparative disparity test to measure underrepresentation where the allegedly excluded group is small and Smith had shown systematic exclusion. The 6th Circuit found Smith entitled to relief because no important state interest supported the district court first allocation system. The Supreme Court reversed. The Court found that neither *Duren v. Missouri*, a case involving underrepresentation of women jurors, nor any other Supreme Court decision specifies the method or test courts must use to measure underrepresentation. Furthermore, Smith failed to show that the court's first assignment order had any significant effect on the representation of African Americans on circuit court venires. The Court emphasized that States's have broad discretion to prescribe relevant juror qualifications and provide reasonable exemptions. Moreover, the Duren Court stated that hardship exemptions like those challenged by Smith might well survive a fair cross section challenge.

To read the full opinion, click here:
http://www.supremecourt.gov/opinions/09pdf/08-1402.pdf

Padilla v. Kentucky, No. 08-861 (March 31, 2010). The U.S. Supreme Court held 7-2 that as a matter of federal law, counsel must properly inform a client when a plea carries a risk of deportation since deportation is an integral part of the penalty that may be imposed on a non-citizen defendant who pleads guilty to specified crimes. Padilla, a lawful United States resident for 40 years, plead guilty to drug charges in Kentucky after he was advised by counsel that he did not have to worry about deportation. That advice was incorrect. Padilla's deportation was presumptively mandatory. However, the Kentucky Supreme Court rejected Padilla's claim of ineffective assistance of counsel on the grounds that deportation was a "collateral" matter. The Supreme Court reversed, holding that Padilla sufficiently alleged a constitutional violation. The Court reasoned that deportation is an integral part of the penalty that a court may impose on a defendant. The Court also held that *Strickland v. Washington* applies to Padilla's claim because deportation is "intimately related to the criminal process." The Court also rejected a proposed rule by the Solicitor General that *Strickland* only apply to the extent a defendant alleges affirmative misadvice, rejecting the notion that the

decision would "open the floodgates" to litigation, and suggested that informed decisions would lead to better results for both the state and foreign defendants.

To read the full opinion, click here:
http://www.supremecourt.gov/opinions/09pdf/08-651.pdf

MISSISSIPPI COURT OF APPEALS CRIMINAL DECISIONS
October 13, 2009 to April 6, 2010

COA DIRECT APPEAL CASES

October 13, 2009

NO. 2008-KA-00284-COA

JOHN EDWARD JONES APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - CONVICTED OF POSSESSION OF COCAINE WITH INTENT TO DISTRIBUTE

SENTENCED TO THIRTY YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS, WITH FIFTEEN YEARS SUSPENDED AND FIVE YEARS OF POST-RELEASE SUPERVISION

TRIAL JUDGE: HON. SHARION R. AYCOCK
COURT FROM WHICH APPEALED: ITAWAMBA COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: ERIN ELIZABETH PRIDGEN
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: JEFFREY A. KLINGFUSS
DISTRICT ATTORNEY: JOHN RICHARD YOUNG

IRVING, J., FOR THE COURT

VOTES: KING, C.J., LEE AND MYERS, P.JJ., GRIFFIS, BARNES, ISHEE, ROBERTS, CARLTON AND MAXWELL, JJ., CONCUR

FACTS

Paltrow, a bail enforcement agent went to Jones home to arrest him on a bench warrant. When in Jones' home, Paltrow noticed something that appeared to be cocaine in Jones' bedroom. The police and sheriff's department were called. The substance was seized and tested positive as cocaine. Jones provided a written statement and admitted ownership of the cocaine. He was convicted of possession with intent to sell and was sentenced to thirty years with fifteen suspended.

ISSUES

Jones argues that the trial court erred in denying his motion for a mistrial, in denying his request for a continuance, and that the evidence was not sufficient to support the conviction.

HOLDING

First, Jones argues that he was entitled to a mistrial because he was brought into the courtroom shackled in front of the jury. The court noted that the granting of a mistrial is within the discretion of the trial judge. Further, the accused has a right to generally be free from restraints when in the presence of the jury. The judge then allowed voir dire on the issue of seeing the defendant shackled. Several jurors indicated that seeing the defendant shackled did in fact prejudice them. The judge then questioned the jurors. All jurors who expressed concerns about seeing the defendant in restraints were excluded form the venire. All remaining jurors were instructed to put aside the fact that the defendant was shackled and to base their decision on the evidence presented. Therefore, it was not an abuse of discretion to deny the motion for a mistrial.

Next, Jones argues that the court erred in not granting his motion for a continuance. Jones trial began October 2, 2006. His attorney made an entry of appearance on February 2, 2003. Another attorney made an entry of appearance on the first day of trial and moved for a continuance. The trial judge denied the motion. Since Jones was represented by counsel for more than three and a half years prior to trial the court found no merit to this issue as Jones fails to show prejudice in the denial of the continuance.

Finally, Jones argues that the evidence is insufficient to support a conviction of possession with intent to deliver. Jones admitted that he was going to sell the cocaine and there was evidence in the record that he had previously been convicted of selling cocaine. Taken together, the evidence was sufficient to support the conviction. The conviction and sentence was affirmed.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO58606.pdf

NO. 2008-KA-01039-COA

LORETHA PAULINE LOGAN MURRAY APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - CONVICTED OF CREDIT CARD FRAUD

SENTENCED TO THREE YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS AND TO PAY A $1,000 FINE AND $1,000 IN RESTITUTION TO THE VICTIM

TRIAL JUDGE: HON. MARCUS D. GORDON
COURT FROM WHICH APPEALED: SCOTT COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: EDMUND J. PHILLIPS
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: W. GLENN WATTS
DISTRICT ATTORNEY: MARK SHELDON DUNCAN

LEE, P.J., FOR THE COURT
VOTES: KING, C.J., MYERS, P.J., GRIFFIS, BARNES, ISHEE, ROBERTS, CARLTON AND MAXWELL, JJ., CONCUR. IRVING, J., CONCURS IN PART AND IN THE RESULT

FACTS

Murray, accompanied by her sister, Lay, visited her podiatrist, Carter. Carter's wife left her purse in Carter's office where patients do not normally go. Upon leaving the office, Lay informed Murray that she had taken a wallet out of the purse in Carter's office. Lay and Murray called Western Union and wired $1000 to themselves from Carter's credit card. Carter noticed the wallet missing and reported it to police. The money was wired within two hours of the card being stolen. Sometime later Murray returned to Carter's office and apologized for stealing the wallet. Murray and Lay were arrested and Murray gave a statement to police. Both were indicted but Lay was killed in a car accident prior to trial. Murray was convicted and sentenced to three years.

ISSUES

Murray raises three issues on appeal; (1) the court erred in overruling two *Batson* objections, (2) her confession was inadmissible, (3) the verdict was against the weight of the evidence.

HOLDING

First, the court examined the *Batson* issue. The state exercised peremptory challenges to two jurors. The court required the state to provide race neutral reasons for the strike. The state explained that it struck the first juror because he was unemployed. The court held this to be sufficiently race neutral. The state explained that it struck the second juror because she was related to criminal defendant in a pending trial. The court held this explanation to be sufficiently race neutral. Therefore there was no merit to this issue.

Next, Murray challenged the admissibility of her confession. She claimed that one of the officers told her that it would be in her best interest to confess and therefore she was coerced into doing so. Two officers testified at trial and both agreed that Murray was read her rights which she waived. Murray then gave a statement which was reduced to writing which she then signed. The trial court found no evidence of promises to Murray and the decision to admit the statement was not error.

Finally, the court examined the weight of the evidence. The court reviewed the evidence as a thirteenth juror and found that allowing the conviction to stand did not sanction an unconscionable injustice. The conviction was affirmed.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO58424.pdf

NO. 2007-KA-02221-COA

DESMOND KEYS APPELLANT
v.

STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - CONVICTED OF MURDER

SENTENCED TO LIFE IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS AND TO COMPLETE THE EIGHTEENTH DISTRICT CIRCUIT COURT'S COMMUNITY SERVICE PROGRAM IF RELEASED BEFORE SERVING THE FULL SENTENCE

TRIAL JUDGE: HON. BILLY JOE LANDRUM
COURT FROM WHICH APPEALED: JONES COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: LESLIE D. ROUSSELL
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: JOHN R. HENRY
DISTRICT ATTORNEY: ANTHONY J. BUCKLEY

KING, C.J., FOR THE COURT
VOTES: LEE AND MYERS, P.JJ., IRVING, GRIFFIS, BARNES, ISHEE, ROBERTS, CARLTON AND MAXWELL, JJ., CONCUR

FACTS

Keys and Tucker were involved in a physical altercation. Keys threw his phone at Tucker and said that he would be back. Tucker wanting too avoid another fight left the scene. Keys returned with a weapon and began shooting into Tucker's apartment. Tucker was not at home but his five year old daughter, Mariyanna died as a result of the shooting. Police found more than thirty shell casings and more than forty bullet holes in the walls of the apartment. Keys was convicted of murder and sentenced to life.

ISSUES

Keys argues on appeal that the trial court erred in not instructing the jury on his theory of the case and that it was error to allow Dr. Steven Hayne to testify in the area of ballistics and the manner of death.

HOLDING

First, Keys argues that the court erred in not granting four instructions that he requested. Keys argued that he should have been given a manslaughter instruction. The court instructed the jury on murder and Keys argued that he was denied his theory of the case. The court reviewed the evidence and determined that a manslaughter instruction was not appropriate. Keys left the scene and returned a while later and began shooting. This was not heat of passion manslaughter. Keys also argued that the shooting could be viewed as culpable negligence. The court held that by leaving the scene and returning with a semi-automatic weapon and shooting many times into the apartment, this was not negligence. It was not error to deny the manslaughter instructions.

Next, Keys argues that it was error to allow Dr. Hayne to testify as an expert in ballistics. The court noted that Keys did not object to the credentials of Dr. Hayne and thus the issue is procedurally barred. Further, the court held that ballistics is a sub-field of pathology. Therefore, it was not error to allow Hayne to testify. Further, Keys argued that Hayne should not have been allowed to testify as the State Medical Examiner as he is not certified by the American Board of Pathology. The court held that Hayne testified that he works as the chief state pathologist and not the State Medical Examiner. Further, Keys did not object at trial. Therefore this issue is also without merit.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO58667.pdf

NO. 2008-KA-00691-COA

REGINALD D. CLAY A/K/A REGINALD DARNELL CLAY A/K/A REGINALD CLAY APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - CONVICTED OF POSSESSION OF COCAINE (2.37 GRAMS)

SENTENCED AS A HABITUAL OFFENDER TO LIFE IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS WITHOUT ELIGIBILITY FOR PROBATION, PAROLE, EARNED TIME, GOOD-TIME CREDIT, REDUCTION OR SUSPENSION

TRIAL JUDGE: HON. ROBERT WALTER BAILEY
COURT FROM WHICH APPEALED: LAUDERDALE COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: BENJAMIN ALLEN SUBER
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: STEPHANIE BRELAND WOOD
DISTRICT ATTORNEY: BILBO MITCHELL

KING, C.J., FOR THE COURT
VOTES: LEE AND MYERS, P.JJ., IRVING, GRIFFIS, BARNES, ISHEE, CARLTON AND MAXWELL, JJ., CONCUR. ROBERTS, J., CONCURS IN PART AND IN THE RESULT

FACTS

Clay was indicted for possession of approximately 2.37 grams of cocaine. He was charged as an habitual offender because this was his second drug offense. Clay did not appear for his trial and was tried in abstentia. He was convicted and sentenced to life without possibility of probation or parole.

ISSUES

On appeal, Clay argued that life without parole is a disproportionate sentence for the crime and constitutes cruel and unusual punishment and that the verdict is against the weight of the evidence.

HOLDING

First, Clay argues that his sentence is unduly harsh. The record established that Clay had been convicted of at least four prior felonies, one of which was robbery, a violent offense. The court held that sentencing is within the discretion of the trial court and will not be reversed if it is within the statutory guidelines. Because Clay was a prior felon with two drug convictions and one violent crime the sentence was within the statutory limits and was not error.

Finally, the court looked at the weight of the evidence. In reviewing the record the court found the evidence to be more than sufficient to sustain the conviction and to allow the verdict to stand does not sanction an unconscionable injustice. Affirmed.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO58669.pdf

NO. 2008-KA-00531-COA

KENDALL WAYNE PILGRIM APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - CONVICTED OF POSSESSION OF METHAMPHETAMINE AND SENTENCED AS A SECOND OFFENDER TO SIXTEEN YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS

TRIAL JUDGE: HON. VERNON R. COTTEN
COURT FROM WHICH APPEALED: NESHOBA COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANT: EDMUND J. PHILLIPS, CHRISTOPHER A. COLLINS
ATTORNEYS FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: BILLY L. GORE
DISTRICT ATTORNEY: MARK SHELDON DUNCAN

MYERS, P.J., FOR THE COURT
VOTES: LEE, P.J., IRVING, BARNES AND ROBERTS, JJ., CONCUR. MAXWELL, J., CONCURS IN PART AND IN THE RESULT WITHOUT SEPARATE WRITTEN OPINION. CARLTON, J., DISSENTS WITH SEPARATE WRITTEN OPINION JOINED BY KING, C.J., GRIFFIS AND ISHEE, JJ.

FACTS

Pilgrim was convicted of possession of methamphetamine. As he approached a roadblock, an officer observed Pilgrim throw an object from his window. Pilgrim was alone in his vehicle. One officer detained Pilgrim and another officer retrieved the object which turned out to be a zippered pouch. Near the pouch was found two plastic baggies containing methamphetamine residue. A forensic scientist testified that the substance in the bag was indeed methamphetamine.

ISSUES

Pilgrim argues that the trial court erred in denying his motion for a continuance, in refusing a jury instruction, and in the admission of hearsay.

HOLDING

First, Pilgrim argues that he should have been granted a continuance. His attorney announced at trial that he had not had an opportunity to confer with his client because Pilgrim was seeking other counsel. However, Pilgrim was not able to retain other counsel. Further, Pilgrim argues that the state did not timely disclose exculpatory evidence of fingerprint analysis that showed no latent prints on the plastic bags. The court held that Pilgrim failed to show any prejudice in his attorneys lack of preparedness and did not allege any on appeal. Therefore there is no merit to this. Pilgrim also argues that he was prejudiced by the discovery violation. The court disagreed and held that Pilgrim could have tested the bags for prints at any time and did not have to rely on the states lab. Further, the lack of prints or another's prints on the bag was not inconsistent with Pilgrim's guilt. He was observed throwing the item out the window and someone else could have handled the bags prior to that time. This issue is without merit.

Next, Pilgrim argues that he was entitled to a circumstantial evidence instruction. The trial court held that this was not a circumstantial evidence case as an officer witnessed Pilgrim throw the bag. The court agreed with the trial judge and found no error in the denial of the instruction.

Finally, Pilgrim argues that the court erred in allowing hearsay evidence. The testimony Pilgrim complains of is that of the states chain-of-custody witness. The witness was asked on redirect about the fingerprints on the bag. He testified that there were none. Pilgrim repeatedly argued that the lack of fingerprints was exculpatory. The court held that reversible error cannot be found in the admission of exculpatory evidence. Therefore the conviction was affirmed.

CARLTON, J., DISSENTING

The dissent would hold that the discovery violation by the State in this case snowballed during the course of the trial into reversible error. The dissent would find reversible error in this case where the State violated discovery and then aggravated the discovery violation by offering hearsay testimony as to unauthenticated contents of the document that the State failed to produce in discovery to the defense.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO57749.pdf

October 20, 2009

NO. 2008-KA-01461-COA

ROSHUN WOODS A/K/A ROSHUN HALL APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - CONVICTED OF POSSESSION OF A CONTROLLED SUBSTANCE WITHIN A CORRECTIONAL FACILITY

SENTENCED TO THREE YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS TO RUN CONSECUTIVELY TO ANY AND ALL SENTENCES PREVIOUSLY IMPOSED WITHOUT THE POSSIBILITY OF PAROLE, PROBATION, SUSPENSION OF SENTENCE, EARNED TIME ALLOWANCE, OR ANY OTHER REDUCTION OF SENTENCE

TRIAL JUDGE: HON. CHARLES E. WEBSTER
COURT FROM WHICH APPEALED: TUNICA COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: RICHARD B. LEWIS
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: DEIRDRE MCCRORY
DISTRICT ATTORNEY: LAURENCE Y. MELLEN

MAXWELL, J., FOR THE COURT
VOTES: KING, C.J., LEE AND MYERS, P.JJ., IRVING, GRIFFIS, BARNES, ISHEE, ROBERTS AND CARLTON, JJ., CONCUR

FACTS

Woods accompanied by Odums went to the Dollar General store to purchase toiletries for her husband who was in the Tunica County jail. She delivered the bag to the jail and left it with the jailers, Clark and Robertson. The bag contained deodorant, soap and toothpaste. When the jailers opened the deodorant they found marijuana and other contraband. Woods was questioned and admitted dropping the items off at the jail but denied placing contraband in them. She was indicted and convicted of possession of a controlled substance in a jail and sentenced to three years.

ISSUES

Woods argues weight and sufficiency of the evidence.

HOLDING

In arguing the weight and sufficiency of the evidence, Woods places a great deal of emphasis the testimony of Odums. Odums testified that she was with Woods the entire time and did not see

her place the contraband in the items purchased from the store. The court reviewed the entire record including the testimony of the jailers and found it to be sufficient to sustain the conviction. Also, allowing the verdict to stand did not sanction an unconscionable injustice and the verdict was not against the weight of the evidence.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO58526.pdf

NO. 2007-KA-01939-COA

DAVID WELCH APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - CONVICTED OF MURDER

SENTENCED TO LIFE IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS

TRIAL JUDGE: HON. FRANK G. VOLLOR
COURT FROM WHICH APPEALED: WARREN COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: JOHN R. MCNEAL
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: LISA LYNN BLOUNT
DISTRICT ATTORNEY: RICHARD EARL SMITH, JR.

CARLTON, J., FOR THE COURT
VOTES: KING, C.J., LEE AND MYERS, P.JJ., IRVING, GRIFFIS, BARNES, ISHEE, ROBERTS AND MAXWELL, JJ., CONCUR

FACTS

Welch was indicted and convicted for the murder of Griffin. Welch gave conflicting stories to police and at trial. The evidence showed that Welch called 911 to report that he had killed an intruder. Welch told police he did not know the intruder and had never seen the sawed-off shotgun before. It was later determined that Welch had know Griffin and owned the gun that he used to shoot Griffin. Miller and Brooks who were neighbors testified that Welch knew Griffin and that Welch owed money to Griffin. Miller testified that both he and Griffin stayed the night in Welch's trailer drinking and doing drugs. Dr Steven Hayne testified that Griffin died of two gunshot wounds, one at close range. Welch was convicted and sentenced to life in prison.

ISSUES

Welch argues the weight and sufficiency of the evidence.

HOLDING

First, Welch argues that the evidence is insufficient and that the *Weathersby* rule applies. That rule provides that when the defendant's version of the facts are the only ones in evidence then they must be accepted as true. The court reviewed all of the evidence and found that other evidence also supported the verdict. Further, because Welch gave conflicting stories he is not able to avail himself of the *Weathersby* rule.

Finally, the court addressed the weight of the evidence. After reviewing the entire record, the court held that allowing the verdict to stand does not sanction an unconscionable injustice.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO57940.pdf

NO. 2008-KA-00225-COA

JERMAIN DEMOND ROBINSON A/K/A JERMAINE DEMOND ROBINSON APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - CONVICTED OF MURDER

SENTENCED TO LIFE IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS

TRIAL JUDGE: HON. W. SWAN YERGER
COURT FROM WHICH APPEALED: HINDS COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANT: WILLIAM R. LABARRE
VIRGINIA LYNN WATKINS
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: LISA LYNN BLOUNT

CARLTON, J., FOR THE COURT
VOTES: KING, C.J., LEE AND MYERS, P.JJ., IRVING, GRIFFIS, BARNES, ISHEE, ROBERTS AND MAXWELL, JJ., CONCUR

FACTS

Johnson and Winters attended a family gathering and then stayed the night together. Robinson, who had a child with Johnson, called her early in the morning and asked if he could come to her home. Johnson declined and said she had company. Robinson continued to call seventeen times and spoke to Winters on the phone. Robinson went to Johnson's home where he shot Winters four times. Robinson claimed that Winters was reaching for something in his pocket. Winters died at the scene. Robinson continued to call Johnson while police were there to investigate the murder.

Police heard Robinson on the phone complaining that Johnson should not have told police that he committed the crime. Robinson was convicted of murder and sentenced to life in prison.

ISSUES

Robinson argues that he was entitled to a mistrial because the prosecutor commented on his right to remain silent, the trial court improperly denied his jury instructions on manslaughter, and he was not allowed to impeach a state witness.

HOLDING

First, Robinson argues that prosecutors improperly commented on his right to remain silent when they cross-examined him at trial. The prosecutor was asking about Robinson's inconsistent statements. The court held that this is not a comment on post-arrest silence since Robinson did not remain silent but gave varying stories. First, he claimed not to be at the scene, and then he claimed that he acted in self-defense. Therefore, the court held this to not be impermissible comments on the right to remain silent. Further, the court held that even if this were comments on the right to remain silent it would be harmless error because of the overwhelming evidence of guilt.

Next, Robinson argues that he was not allowed to present his theory of the case when the trial court denied his manslaughter instructions. Robinson argues that he was entitled to a heat-of-passion instruction which was denied. The court looked at the evidence and held that words alone do not entitled one to a heat-of-passion defense. Since all of the words between Robinson and Winters took place via telephone, Robinson was not entitled to the instruction. The court did allow an instruction on self defense even though the evidence of self defense was tenuous at best. Therefore, there was no merit to this issue.

Finally, Robinson claims that he was not allowed to impeach Johnson, a witness against him. The court noted that Robinson was allowed to recall Johnson during his case in chief and that he was allowed to fully examine her about the statements complained of. Robinson's argument is that the impact of Johnson testimony was lost because he was forced to re-call her. The court held that a trial judge is allowed to control the presentation of testimony. In this case, it was proper to require a proper foundation before Johnson was allowed to discuss the alleged statements. Because Robinson was not denied an opportunity to impeach Johnson, this issue is also without merit.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO58360.pdf

NO. 2008-KA-00787-COA

ROBERT L. SANDERS A/K/A ROBERT LOUIS SANDERS APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - CONVICTED OF SIMPLE ROBBERY

SENTENCED TO TWELVE YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS WITH THREE YEARS SUSPENDED

TRIAL JUDGE: HON. HENRY L. LACKEY
COURT FROM WHICH APPEALED: LAFAYETTE COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANT: BENJAMIN ALLEN SUBER, GEORGE T. HOLMES, LESLIE S. LEE
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: DEIRDRE MCCRORY
DISTRICT ATTORNEY: BENJAMIN F. CREEKMORE

CARLTON, J., FOR THE COURT
VOTES: KING, C.J., LEE AND MYERS, P.JJ., IRVING, GRIFFIS, BARNES, ISHEE, ROBERTS AND MAXWELL, JJ., CONCUR

FACTS

McNeil was working the late shift at the Subway restaurant in Oxford. A man with rough hands and bad teeth entered the restaurant and demanded money from the register. The man stuttered when he spoke. McNeil first thought it was a joke when the man place his hands in the pocket of his sweatshirt to make it look as though he had a weapon. McNeil then gave the money to the man who then left. McNeil called the police and gave a description. About a week later, police arrested a man that fit the description given by McNeil. Police then presented McNeil with a photo lineup and he was able to select Sanders. McNeil also identified Sanders in the courtroom. Sanders was convicted of simple robbery and sentenced to fifteen years in custody.

ISSUE

On appeal, Sanders argued weight of the evidence.

HOLDING

Sanders argues the weight of the evidence in that he was misidentified. The court reviewed the evidence and held that McNeil's testimony was consistent. He immediately told police that he was robbed by an elderly black male with rough hands, a missing tooth, and a stutter. McNeil identified Sanders in a photo lineup and at trial. Sanders wife also testified that Sanders worked construction and often came home with concrete dust on his hands, and that he stuttered and had a missing tooth. Viewing all of the evidence, allowing the verdict to stand did not sanction an unconscionable injustice.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO57934.pdf

NO. 2007-KA-01244-COA

JAMES BRIAN BUCKLEY APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - CONVICTED OF SALE OF COCAINE

SENTENCED TO TWENTY YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS AND TO PAY A FINE OF $5,000

TRIAL JUDGE: HON. MARCUS D. GORDON
COURT FROM WHICH APPEALED: NESHOBA COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: WESLEY THOMAS EVANS
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: LAURA HOGAN TEDDER
DISTRICT ATTORNEY: MARK SHELDON DUNCAN

IRVING, J., FOR THE COURT
VOTES: KING, C.J., LEE AND MYERS, P.JJ., GRIFFIS, BARNES, ISHEE, ROBERTS, CARLTON AND MAXWELL, JJ., CONCUR

FACTS

Officer Higgason and Officer Burt employed McKinney to make a controlled buy of cocaine. He was provided money and wired with audio and video equipment. McKinney drove to Buckley's home and purchased twenty-five dollars worth of cocaine. Buckley was convicted and sentenced to twenty-five years in custody.

ISSUES

On appeal, Buckley argued sufficiency of the evidence and ineffective assistance of counsel.

HOLDING

In reviewing the sufficiency of the evidence the court looked at the record. The court noted that both officers testified, the video was presented and that a lab analyst testified that the substance was in fact cocaine. Further, McKinney testified that he purchased the drugs from Buckley. The court held that the evidence was sufficient to sustain the conviction.

Next, the court looked at the claim of ineffective assistance of counsel. Buckley argues ineffectiveness for two reasons, one, that he did not assert an insanity defense, and two, that he did not use a peremptory challenge to strike the wife of the sheriff. As for the insanity defense, Buckley offers no proof of insanity. As for the peremptory strike, the court presumes that the actions of counsel during voir dire are trial strategy. However, the court refused to address this issue and instead held that it would be better presented during a PCR motion.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO58836.pdf

October 27, 2009

NO. 2008-KP-00313-COA

CHRISTOPHER KEON DRUMMOND APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - CONVICTED OF AGGRAVATED ASSAULT

SENTENCED TO TWENTY YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS

TRIAL JUDGE: HON. STEPHEN B. SIMPSON
COURT FROM WHICH APPEALED: HARRISON COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: CHRISTOPHER KEON DRUMMOND (PRO SE)
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: BILLY L. GORE
DISTRICT ATTORNEY: CONO A. CARANNA II

KING, C.J., FOR THE COURT
VOTES: LEE AND MYERS, P.JJ., IRVING, GRIFFIS, BARNES, ISHEE, ROBERTS, CARLTON AND MAXWELL, JJ., CONCUR

FACTS

Drummond shot and permanently disabled Moffett after he thought that Moffett had stolen drugs from him. Moffett had assisted Duckworth in cleaning Durr's home. Drummond lived with Durr and the drugs were stolen from the home while Moffett and Duckworth were cleaning. Drummond was convicted of aggravated assault and sentenced to twenty years.

ISSUES

Drummond argues the following issues: (1) the jury verdict is against the overwhelming weight of the evidence; (2) the trial court erred in allowing a witness to testify to hearsay information; (3) he was denied effective assistance of counsel; (4) he was denied his constitutional and statutory rights to a speedy trial; and (5) he suffered cumulative error.

HOLDING

First, Drummond argues the weight of the evidence. The court reviewed the record and looked to the testimony of Duckworth and Moffett along with Moffett's identification of Drummond

in a photo lineup. Further, Moffett was able to tell police the location of Drummond's home and about the threats prior to the shooting. Allowing the verdict to stand does not sanction an unconscionable injustice and this issue is without merit.

Next, Drummond complains of hearsay testimony that identified him as the shooter. The court noted that Drummond did not object to this testimony at trial and thus was procedurally barred from raising this issue on appeal.

Next, Drummond argues ineffective assistance of counsel. The court noted that because of the state of the record in this case that it is better situated for hearing during post-conviction proceedings and therefore deferred ruling on this issue.

Next, Drummond alleges speedy trial violations. Again, Drummond did not preserve this issue for appeal because he did not raise the issue at the trial level or during post-trial motions. Therefore, the issue is procedurally barred.

Finally, Drummond argues cumulative error. Because the court found no error there could be no cumulative error. This issue is also without merit and the conviction and sentence is affirmed.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO59289.pdf

November 3, 2009

NO. 2008-KA-00970-COA

JAVORAS MOTEN APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - CONVICTED OF SIMPLE ASSAULT OF AN EMPLOYEE OF A PRIVATE CORRECTIONAL FACILITY

SENTENCED TO FOUR AND ONE-HALF YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS, WITH THE SENTENCE TO RUN CONSECUTIVELY TO ANY PRIOR SENTENCE THE DEFENDANT IS SERVING

TRIAL JUDGE: HON. MARCUS D. GORDON
COURT FROM WHICH APPEALED: LEAKE COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANT: EDMUND J. PHILLIPS, P. SHAWN HARRIS
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: STEPHANIE BRELAND WOOD
DISTRICT ATTORNEY: MARK SHELDON DUNCAN

CARLTON, J., FOR THE COURT

VOTES: KING, C.J., LEE AND MYERS, P.JJ., IRVING, GRIFFIS, BARNES, ISHEE, ROBERTS AND MAXWELL, JJ., CONCUR.

FACTS

Jenkins worked as a correctional officer. Moten was a prisoner. Jenkins was picking up trays from the cells after a meal in the jail. Prisoners were on lock down and supposed to be in the cell. When Jenkins opened Moten's cell to retrieve the tray Moten kept the door from closing. Moten had placed an object in the door to keep it from closing. Jenkins attempted to remove the object and Moten struck her in the upper body. She was not injured but called for assistance. Moten was convicted of assault on a correctional officer and sentenced to four and one half years in custody.

ISSUES

Moten argues the weight and sufficiency of the evidence and that the indictment was defective.

HOLDING

Moten argues that the indictment did not charge him with simple assault and instead described the acts that constitute simple assault. The court held that from reading the indictment as a whole, the nature and cause of the charge against Moten are clear, and the indictment properly informs Moten of the possible defenses to the charged offense of "willfully, unlawfully, feloniously, purposely and knowingly [causing] bodily injury to LaDonna Jenkins." Moten has not further demonstrated how he was prejudiced in the preparation of his defense, and the court found that this issue is without merit.

As for the weight and sufficiency of the evidence the court found that when viewing the evidence in a light favorable to the state, that the state proved beyond a reasonable doubt the necessary allegations in the indictment. To allow the verdict to stand does not sanction an injustice. The verdict is affirmed.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO58312.pdf

NO. 2008-KA-01260-COA

CEDRIC CATCHINGS APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - CONVICTED OF CAPITAL MURDER

SENTENCED TO LIFE IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS WITHOUT THE POSSIBILITY OF PAROLE

TRIAL JUDGE: HON. WINSTON L. KIDD
COURT FROM WHICH APPEALED: HINDS COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANT: JUSTIN TAYLOR COOK, LESLIE S. LEE
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: LAURA HOGAN TEDDER
DISTRICT ATTORNEY: ROBERT SHULER SMITH

CARLTON, J., FOR THE COURT

VOTES: KING, C.J., LEE AND MYERS, P.JJ., IRVING, GRIFFIS, ISHEE, ROBERTS AND MAXWELL, JJ., CONCUR. BARNES, J., CONCURS IN PART AND IN THE RESULT

FACTS

Redmond was found dead in his vehicle after having been shot six times with a nine millimeter weapon. His pants pockets were turned inside out. Cell phone records form Redmond's phone led investigators to Catchings. Police went to Catchings home where his wife consented to a search. Nine millimeter bullets were found in the home. Police came back with a warrant and a nine millimeter weapon was found along with items of clothing that were purchased with Redmond's credit card on the day of his murder. Jeantry, a witness was barbecuing outside when he heard shots near Redmond's vehicle. When he looked, he was able to identify Catchings as the person standing near Redmond's vehicle at the time of the shooting. Catchings was tried and convicted of capital murder and sentenced to life without parole.

ISSUES

Catchings raises the following assignments of error: (1) he was deprived of his fundamental right to a fair trial by repeated acts of prosecutorial misconduct; (2) the trial court erred by not allowing counsel to fully cross-examine Jeanty, a non-party witness, regarding his two previous felony convictions; and (3) cumulative error deprived him of his fundamental right to a fair trial.

HOLDING

Catchings first argues that prosecutors engaged in misconduct by inviting the jury to send a message with the verdict. The complained of remarks were found in opening and closing statements. Catchings objected when the remarks were made. The court reviewed the transcripts and could not find that the prosecutor's comments in the opening and closing statements were improper or that they prejudicially affected Catchings's right to a fair trial, there was no merit to this issue.

Next, Catchings argues that prosecutors questions to witness Jeantry were calculated to inflame the jury. Catchings objected to the questions and the objection was sustained. Catchings asked for no other relief. This is without merit.

Next, Catchings argues that prosecutors improperly commented on his post-arrest silence. The court held that if this was error it was harmless because of the overwhelming evidence of guilt in this

case. Catchings also complained that prosecutors asked questions about phone records that were not in evidence. He objected. The trial judge warned prosecutors to lay a proper foundation prior to any more questions of records. They did. Catchings right to a fair trial was not prejudiced by reference to the phone records.

Next, Catchings argues that he was improperly restricted in his questioning of Jeantry. Specifically, he wanted to question Jeantry about prior felony convictions. The trial judge did not allow this line of inquiry. It examined the record and found that due to the overwhelming evidence against him, Catchings was not prejudiced by the trial court's exclusion of Jeanty's prior convictions for impeachment purposes. Therefore, this issue is without merit.

Finally, Catchings argues cumulative error. In light of the overwhelming evidence of Catchings's guilt, the court found that even if cumulative errors exist in the case at hand, such errors are not prejudicial to Catchings's right to a fair trial. This issue is without merit. The conviction was affirmed.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO58115.pdf

NO. 2008-KA-01540-COA

SCOTT M. TANNER APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - CONVICTED OF SEXUAL BATTERY

SENTENCED TO TWENTY YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS, WITH FOURTEEN YEARS TO SERVE AND SIX YEARS OF POST-RELEASE SUPERVISION

TRIAL JUDGE: HON. KATHY KING JACKSON
COURT FROM WHICH APPEALED: JACKSON COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: GEORGE S. SHADDOCK
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: DEIRDRE MCCRORY
DISTRICT ATTORNEY: ANTHONY N. LAWRENCE III

MYERS, P.J., FOR THE COURT

VOTES: KING, C.J., LEE, P.J., IRVING, GRIFFIS, BARNES, ISHEE, ROBERTS, CARLTON AND MAXWELL, JJ., CONCUR

FACTS

Tanner, twenty-nine years old, lived as a guest in the Lewis home for five years. In addition to Timothy and Irene Lewis, their twelve year old daughter also lived in the home. One morning, Timothy went to wake his daughter and did not find her in her bedroom. Timothy then observed his daughter leaving Tanner's bedroom. When questioned, the daughter admitted to having sexual intercourse with Tanner. Tanner was asked to leave the home, but he called later to speak to the daughter on the phone. The conversation was recorded and Tanner made incriminating statements. He was convicted of sexual battery and sentenced to fourteen years.

ISSUES

Tanner argued weight of the evidence, error in amending the indictment, and error in admitting the audiotape.

HOLDING

First, the court looked at the amended indictment. The amendment concerned the date of the offense. Tanner originally objected to the amendment but later offered the language adopted by the court as to specific dates. Because Tanner offered the language adopted by the court he cannot now complain of the amendment.

Next, the court looked at the audiotape evidence. Tanner argued that this evidence was "manufactured" but offered no authority for this issue. As such this issue was barred from review and is without merit.

Finally, the court looked at the weight of the evidence. The court reviewed this evidence in the light most favorable to the prosecution. In looking at all of the evidence, allowing the verdict to stand would not sanction an unconscionable injustice.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO58768.pdf

NO. 2008-KA-00469-COA

JOE LEE BRUNNER APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - CONVICTED OF COUNT I, HOUSE BURGLARY, COUNT II, AGGRAVATED ASSAULT, COUNT III, ARMED ROBBERY, AND COUNT IV, AUTO THEFT

SENTENCED TO FIFTY YEARS ON COUNT I, FORTY YEARS ON COUNT II, EIGHTY YEARS ON COUNT III,, AND SENTENCED TO TEN YEARS ON COUNT IV, WITH ALL SENTENCES TO RUN CONSECUTIVELY IN THE CUSTODY OF MISSISSIPPI DEPARTMENT OF CORRECTIONS

TRIAL JUDGE: HON. BOBBY BURT DELAUGHTER
COURT FROM WHICH APPEALED: HINDS COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANT: VIRGINIA LYNN WATKINS, WILLIAM R. LABARRE
ATTORNEYS FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: LISA LYNN BLOUNT
DISTRICT ATTORNEY: FAYE PETERSON

CARLTON, J., FOR THE COURT

VOTES: KING, C.J., LEE AND MYERS, P.JJ., GRIFFIS, BARNES, ISHEE AND ROBERTS, JJ., CONCUR. IRVING, J., DISSENTS WITHOUT SEPARATE WRITTEN OPINION. MAXWELL, J., NOT PARTICIPATING

FACTS

After her husband left for work, eighty year old May was in bed and noticed someone enter her home. She pretended to be asleep but watched as the individual rummaged through her possessions. May pulled a gun from her night stand but the intruder overwhelmed her and took the weapon. He then beat her and took the keys to her car, her purse and gun. May identified the intruder as someone who previously worked with her husband although she did not know a name. Brunner was developed as a suspect. Brunner admitted to driving the car but said that he rented it from someone. Brunner was indicted and convicted of armed robbery, aggravated assault, burglary, and auto theft. Because of the age of the victim the sentence was enhanced.

ISSUES

Brunner argues that he was improperly denied a jury instruction and the evidence was not sufficient.

HOLDING

First, Brunner argues that he was denied his theory of the case on misidentification by eyewitnesses in his jury instructions. The court reads the instructions as a whole and not in isolation. The court noted that five of the instructions dealt with the burden of proof by the state. When read as a whole, the instructions encompassed misidentification. Therefore, this issue lacks merit.

As for the sufficiency of the evidence, the court reviews the evidence in a light favorable to the prosecution. In looking at the evidence, the court determined that the jury was able to resolve factual inconsistencies. A rational juror could find that Brunner was guilty of the crimes charged and this issue was without merit.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO57803.pdf

NO. 2008-KA-01176-COA

JOHN EDWARD JOHNSON APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - CONVICTED OF DEPRAVED-HEART MURDER AND SENTENCED TO LIFE IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS

TRIAL JUDGE: HON. ROBERT P. KREBS
COURT FROM WHICH APPEALED: JACKSON COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANT: HUNTER NOLAN AIKENS, LESLIE S. LEE
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: LISA BLOUNT
DISTRICT ATTORNEY: ANTHONY N. LAWRENCE III

ROBERTS, J., FOR THE COURT

VOTES: KING, C.J., GRIFFIS, BARNES, ISHEE AND MAXWELL, JJ., CONCUR. LEE, P.J., DISSENTS WITH SEPARATE WRITTEN OPINION JOINED BY MYERS, P.J., IRVING AND CARLTON, JJ.

FACTS

Johnson was convicted of the depraved heart murder of Franklin. Franklin dated and lived with Johnson's daughter Starla who was thirteen years younger than Franklin. Johnson and Franklin had a turbulent relationship which included several altercations and shootings. Johnson came to Starla and began arguing with her. Franklin arrived a while later. Everyone testified that Franklin became aggressive with Johnson. Johnson never left his vehicle and did not take off his seat belt. Johnson attempted to leave and Franklin ran alongside his vehicle. Franklin came into the window of Johnson's vehicle and attempted to grab a pistol. However, Franklin was shot and Johnson left the scene. Franklin died at the scene. Johnson was arrested and stated that he did not kill anyone but acted in self-defense. Johnson was convicted of depraved heart murder and sentenced to life. The jury was instructed on manslaughter as well as murder.

ISSUES

Johnson argued the weight and sufficiency of the evidence on appeal.

HOLDING

First, the court examined the sufficiency of the evidence. Johnson was convicted of depraved heart murder. The record indicates that the jury had difficulty rendering this verdict. The jury asked the court to explain the difference between murder and manslaughter. The court responded that the instructions were sufficient. Construing the evidence in a light most favorable to the prosecution, the court held that a rational juror could not conclude that all of the elements of murder were met. A

conviction of depraved heart murder rises to the level of a manifest injustice. Clearly there was no premeditation on the part of Johnson and his actions do not rise to the level of a depraved heart. The proper result here is to reverse and remand for re-sentencing for manslaughter. Manslaughter was the only appropriate verdict that could be justified in this case.

Next, the court examined the weight of the evidence. The court held that the evidence preponderates heavily against depraved heart murder. The record is ample for a verdict of manslaughter but not murder. Therefore, the appropriate remedy is re-sentencing for manslaughter.

Finally, the court turned to the issue of self-defense. The court reviewed several depraved heart convictions and found that Johnson's actions did not rise to this level. There was no innocent bystander nor unintended victim killed as is the circumstance intended to be covered under the traditional view of the depraved-heart murder statute. Furthermore, this is not a savage or merciless fatal beating where the defendant claims no specific intent to kill. The record in the case at bar simply does not reflect the depravity and calculated deliberate acts exhibited by the defendants in these prior cases; it reflects the actions of one acting more rashly – out of the heat of passion but with a mistaken claim of necessary self-defense.

LEE, P.J., DISSENTING

The dissent would find that there was sufficient evidence for the jury to find John Johnson guilty of depraved-heart murder, and would affirm Johnson's conviction. The majority has invaded the province of the jury and reversed the murder conviction. However, the jury heard the testimony, saw the demeanor of the witnesses, assessed their credibility, and found Johnson guilty of depraved-heart murder, not manslaughter.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO58912.pdf

November 10, 2009

NO. 2008-KA-00786-COA

RUBIN RENFROW APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - CONVICTED OF POSSESSION OF CHILD PORNOGRAPHY

SENTENCED TO FIFTEEN YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS

TRIAL JUDGE: HON. ROBERT G. EVANS
COURT FROM WHICH APPEALED: SIMPSON COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANT: W. TERRELL STUBBS, REEVES JONES
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: DEIRDRE MCCRORY
DISTRICT ATTORNEY: EDDIE H. BOWEN

ROBERTS, J., FOR THE COURT
VOTES: KING, C.J., LEE AND MYERS, P.JJ., IRVING, GRIFFIS, BARNES, ISHEE, CARLTON AND MAXWELL, JJ., CONCUR

FACTS

In March of 2006, a child related to Renfrow indicated to a school counselor that the child was exposed to inappropriate matter of a sexual nature. The child and a sibling indicated that Renfrow showed them pictures of naked adults and children. Officials in Simpson County sought and obtained warrants to arrest Renfrow and to seize his computer. Renfrow waived his rights and agreed to be interviewed by investigators. During the interview Renfrow admitted that he had child pornography on his computer but denied that it was intentional and instead came from unsolicited e-mail which he tried to delete. The interview was recorded without audio. Renfrow filed several pre-trial motions including motions to suppress and for continuance. Ultimately, Renfrow was tried and convicted of possession of child pornography. He was sentenced to fifteen years in custody.

ISSUES

Renfrow argued that the court erred (1) in denying the motion to suppress the evidence seized from his computer, (2) in denying his motion to suppress his interview, (3) in denying his motion to dismiss the indictment because section 97-5-33(5) is impermissibly vague, (4) in denying his motion for continuance to examine the duplicate of his hard drive, (5) in denying his motion for JNOV, and (6) in denying his motion for a new trial.

HOLDING

First, the court addressed the vagueness of section 97-5-33(5). Renfrow argued that subsection (5) does not contain an element of intent or mens rea. Renfrow argues that people who have unintentionally or unknowingly had child pornography placed on their computer could be prosecuted. However, the court declined to address this issue because in this case the indictment did charge Renfrow with mens rea. Therefore, because of the indictment in this case the court did not have to address the vagueness of the statute.

Next, the court looked at the motions to suppress the indictment. Decisions of a trial court to admit or suppress evidence will not be disturbed "unless it is clearly wrong." The first motion to suppress deals with Renfrow's computer. Renfrow argued that there was no probable cause to issue the search warrant, his computer was contaminated with viruses while in the state's custody, there was a discrepancy in the computer's serial number and the number recorded by the state, and the state failed to establish a proper chain of custody. As for probable cause, Renfrow argued that the allegations by the children came approximately ten months after the incident. However, because authorities were unaware of the incident until related by the children, the staleness of the allegations

does not matter. Based upon a totality of the circumstances, there was probable cause to issue the warrant.

As for the integrity of the hard drive, Renfrow argues that many people had access to the vault and made copies from the original. However, the court held that this argument is purely speculative. No evidence was presented to substantiate Renfrow's arguments.

He also argues that his expert found "bad sectors" on the hard drive which indicated that the state failed to protect it's integrity. Renfrow's expert testified that the bad sectors contained very little information and there was no testimony that the sectors were damaged by the state. This argument is also without merit. And, Renfrow also complains of the fail-safe systems of the cyber crimes unit. However, the court found the procedures employed to be sufficient.

The court next addressed the discrepancies in the serial numbers. The court found this to be merely a clerical error and without merit. Further, Renfrow argues that the court should have suppressed the hard drive evidence because the state failed to establish a chain of custody. However, Renfrow fails to make any specific allegation of error, merely that numerous people had access to the vault. Because the state presented an adequate chain of custody and Renfrow failed to point out any specific inadequacy, this issue is without merit.

Finally, Renfrow argues that it was error to allow introduction of a copy of the hard drive rather than the original. This issue is also without merit as experts testified why it is preferable to test an original as opposed to a copy.

Next, Refrow argues that his statement should have been suppressed because he was enticed to go to the sheriff's office, he did not sign the statement, and, it was not Renfrow's statement but was the investigator's recollection of the interview. The court found that Renfrow was not enticed to go to the sheriff's office and was not enticed to be interviewed. Renfrow's argument that it was not his statement but was the investigators recollection goes to weight and credibility but not admissibility. This issue is without merit.

Next, the court addressed the motion for a continuance. Renfrow argued that he was entitled to a continuance until such time as his expert could examine the original hard drive. The court noted that the denial of a motion to continue is not reversible unless it results in manifest injustice. Renfrow does not point to anything that might be discovered had the continuance been granted. Additionally, the testimony revealed that had Renfrow's expert been allowed to test the evidence as he wanted then the evidence would have been destroyed. Renfrow had no specific purpose in seeking the continuance, he merely speculated that his expert could have found something had he been given additional time. Therefore, the it was not an abuse of discretion to dent the continuance.

Next, the court looked at the sufficiency of the evidence. Renfrow argued that he did not know that the these files were on his computer, he did not send these files, and he was a computer novice. It was undisputed that child pornography was found on the computer. Renfrow's expert testified that viruses were present on the computer that could have transferred the images. However, the state experts testified that viruses were not responsible for these images and were stored under a file created by Renfrow. Additionally, experts testified that e-mails were sent by Renfrow detailing

child sex acts and incest. Viewing all of this evidence, the court concluded that a reasonable juror could find Renfrow guilty.

Finally, the court reviewed the weight of the evidence. Viewing the evidence in a light most favorable to the state, allowing the verdict to stand does not sanction an unconscionable injustice. This issue is also without merit and the conviction is affirmed.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO59147.pdf

NO. 2008-KA-01170-COA

ROBERT DUBOSE A/K/A ROBERT T. DUBOSE, SR. APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - CONVICTED OF THREE COUNTS OF GRATIFICATION OF LUST

SENTENCED TO TEN YEARS ON EACH COUNT TO BE SERVED CONSECUTIVELY ALL IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS

TRIAL JUDGE: HON. ROBERT G. EVANS
COURT FROM WHICH APPEALED: JASPER COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: BENJAMIN ALLEN SUBER
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: GLENN WATTS
DISTRICT ATTORNEY: R. WILEY WEBB

ROBERTS, J., FOR THE COURT
VOTES: KING, C.J., LEE AND MYERS, P.JJ., IRVING, GRIFFIS, BARNES, ISHEE, CARLTON AND MAXWELL, JJ., CONCUR.

FACTS

Dubose and his wife, Mary, adopted three children shortly after they were married in 2000. In 2006 Mary went into the hospital. Shortly thereafter, authorities received a report of sexual abuse against the children. Parker interviewed the children and each related instances of sexual abuse by Dubose while Mary was in the hospital. The children were removed from the home and examined by medical personnel. At trial the children told much the same story as when they were interviewed. Dubose was convicted of three counts of gratification of lust and sentenced to thirty years.

ISSUES

Dubose argues misconduct of a juror, error in accepting race neutral reasons for juror strikes, and weight of the evidence.

HOLDING

First, the court examined the issue of juror misconduct. Dubose claims that he was denied a fair trial because a juror failed to disclose his relationship to Dubose's wife. The juror was related to Mary's ex-husband. The court examined the record of the voir dire of this juror and found that he did admit that he knew several defense witnesses although he did not admit to knowing Mary. The court held that there is no inference that Dubose was prejudiced during jury selection or that the court committed reversible error.

Next, the court examined the *Batson* argument. Dubose argues that the state used all six peremptory strikes against African-Americans and that the reasons offered for those strikes were pretextual. The court noted that in order to fully examine this issue it should look to the racial makeup of the jury. The court could not do so in this case as nowhere in the record did it reflect the makeup of the jury. Therefore, the court was left to examine the reasons proffered for the strikes. The court looked at each of the strikes and the reasons offered for the strikes and found each to be race neutral. This issue is without merit.

Finally, the court examined the weight of the evidence. Dubose argues that there is virtually no evidence that he assaulted the children. The court noted that all three children testified in graphic detail. There was medical testimony of the injuries to the children. Considering all of this, the verdict is not against the weight of the evidence. This issue is also without merit.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO59148.pdf

NO. 2008-KA-00609-COA

RONREGUS FLOWERS APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - CONVICTED OF HOUSE BURGLARY

SENTENCED TO TEN YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS WITH TWO YEARS OF POST-RELEASE SUPERVISION

TRIAL JUDGE: HON. WINSTON L. KIDD
COURT FROM WHICH APPEALED: HINDS COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANT: VIRGINIA LYNN WATKINS, WILLIAM R. LABARRE, GRETA D. MACK HARRIS
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: LISA LYNN BLOUNT

DISTRICT ATTORNEY: ELEANOR J. PETERSON

ISHEE, J., FOR THE COURT
VOTES: KING, C.J., LEE AND MYERS, P.JJ., IRVING, GRIFFIS, BARNES, ROBERTS, CARLTON AND MAXWELL, JJ., CONCUR

FACTS

Funches was preparing for a hunting trip early one morning when he observed Flowers kick in the door to his neighbors house and enter it. Funches instructed his wife to call police and then retrieved his hunting rifle and waited for Flowers to exit the home. When Flowers attempted to walk out the door, Funches pointed the rifle at Flowers and instructed him lie down. Funches waited over Flowers until police arrived. Flowers was convicted of house burglary and sentenced to ten years.

ISSUES

Flowers appeals arguing that the court erred in excluding a statement he made to officers at the scene, it was error to reject his jury instruction, and it was error to allow cross-examination of Flowers regarding another crime.

HOLDING

First, the court examined whether it was error to exclude his comments to officers at the scene as hearsay. At the scene, Flowers stated that he broke into the home because someone was chasing him. The court did not allow this statement to be admitted. The court held "the defendant is barred from introducing a statement made by the defendant immediately after the crime, if it is self-serving, and if the State refuses to use any of it." Therefore, the statements were properly excluded.

Next, the court looked at the denial of a jury instruction. The court reviews jury instructions as a whole and not in isolation. The court held that Flowers failed in proving his defense of necessity. Other than his testimony, there was no evidence to support Flowers story. His jury instruction on necessity was properly rejected.

Finally, the court examines the state's cross-examination of Flowers. Here, the court held that Flowers opened the door to cross-examination on a pending robbery charge when he testified. Because he opened the door, he cannot now complain. The conviction and sentence were affirmed.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO58552.pdf

NO. 2008-KA-01295-COA

HOWARD MONTEVILLE NEAL APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - CONVICTED OF CAPITAL MURDER

SENTENCED TO LIFE IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS WITHOUT THE POSSIBILITY OF PAROLE, WITH THE SENTENCE TO RUN CONSECUTIVELY TO THE CURRENT LIFE SENTENCE THE DEFENDANT IS SERVING

TRIAL JUDGE: HON. R.I. PRICHARD III
COURT FROM WHICH APPEALED: LAMAR COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANT: JAMES W. CRAIG, JUSTIN L. MATHENY
ATTORNEY FOR APPELLEE: OFFICE OF ATTORNEY GENERAL
BY: JOHN R. HENRY
DISTRICT ATTORNEY: HALDON J. KITTRELL

ISHEE, J., FOR THE COURT
VOTES: KING, C.J., LEE AND MYERS, P.JJ., IRVING, GRIFFIS, BARNES, ROBERTS, CARLTON AND MAXWELL, JJ., CONCUR

FACTS

Neal was sentenced to death in 1982 for capital murder. Following the decision of the United States Supreme Court which prohibited the execution of mentally retarded individuals, Neal sought permission for the removal of his death sentence. Neal was examined by medical personnel and indeed deemed to be mentally retarded. The state agreed and sought to re-sentence Neal to life without parole. Neal argued that he was entitled to be sentenced to life, but with parole.

ISSUE

The sole issue on appeal was whether Neal was entitled to be sentenced to life with the opportunity for parole.

HOLDING

Neal argues that when he was originally sentenced, there was no statute that authorized life without parole. The statute authorizing this sentence was implemented after Neal was convicted. Therefore, he argues that the sentence to life without parole is ex post facto punishment. The court found that this statute was in fact enacted in 1977, which pre-dates Neal's crime. Therefore, it was not error to sentence Neal to life without parole.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO58695.pdf

November 17, 2009

NO. 2008-KA-01398-COA

JAMES KENDRICK APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - CONVICTED OF AGGRAVATED ASSAULT

SENTENCED TO FIFTEEN YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS, WITH THIS SENTENCE TO RUN CONSECUTIVELY TO THE SENTENCE IN RANKIN COUNTY CAUSE NUMBER 12,620

TRIAL JUDGE: HON. BETTY W. SANDERS
COURT FROM WHICH APPEALED: SUNFLOWER COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: GEORGE T. HOLMES
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: LADONNA C. HOLLAND
DISTRICT ATTORNEY: WILLIE DEWAYNE RICHARDSON

IRVING, J., FOR THE COURT
VOTES: KING, C.J., LEE AND MYERS, P.JJ., GRIFFIS, ISHEE, ROBERTS, CARLTON AND MAXWELL, JJ., CONCUR. BARNES, J., CONCURS IN PART AND IN THE RESULT

FACTS

Bozeman was stabbed in the neck while he was incarcerated in the state penitentiary. The stabbing was captured on video. Kendrick, another inmate was arrested and charged with the attack. Kendrick was convicted and sentenced to fifteen years consecutive to the sentence he was already serving.

ISSUES

Kendrick argues that the verdict is not supported by the evidence, that the trial court erred in allowing lay medical testimony, and the jury was presented with conflicting instructions.

HOLDING

First, the court looked at the sufficiency of the evidence. Kendrick argues that the video does not clearly show which cell the stabbing came from and the testimony on this issue is not sufficient. The court reviewed the testimony and found that it was sufficient.

Next, Kendrick argues that the testimony does not establish that Bozeman suffered a serious injury. However, the statute only requires that Kendrick attempted to cause a serious injury. The evidence supports this attempt.

Next, Kendrick argues that the state failed to prove the use of a dangerous weapon. The court found that the homemade knife found in the cell adjacent to Kendrick was sufficient.

Next, the court examined the issue of lay medical testimony. Hamilton, an investigator was allowed to testify as to the things he learned during his investigation. He was admonished not to talk about any diagnosis or medical conclusions. The court found no error in allowing Hamilton to testify about his investigation. It was not scientific or technical and was limited to what he perceived. This was not error.

Finally, Kendrick argues that the jury instructions should have included circumstantial evidence language. Kendrick argues that the instructions granted were in conflict. After reviewing the instructions, the court held that when taken as a whole, the instructions fairly and correctly informed the jury of the applicable law. This issue is also without merit.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO59504.pdf

NO. 2008-KA-00814-COA

SHAWN LAWAN MCLAURIN APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - CONVICTED OF RAPE

SENTENCED TO LIFE IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS

TRIAL JUDGE: HON. TOMIE T. GREEN
COURT FROM WHICH APPEALED: HINDS COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: J. CHRISTOPHER KLOTZ
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: BILLY L. GORE
DISTRICT ATTORNEY: ELEANOR FAYE PETERSON

MYERS, P.J., FOR THE COURT
VOTES: KING, C.J., LEE, P.J., IRVING, GRIFFIS, BARNES, ISHEE, ROBERTS, CARLTON AND MAXWELL, JJ., CONCUR

FACTS

L.E. knew the defendant, McLaurin as acquaintances for a few years. L.E. called McLaurin from her dorm room one evening and the two left the Tougaloo campus in McLaurin's vehicle. McLaurin stopped at a residence he said belonged to his sister. There the two watched television until McLaurin asked L.E. to engage in sex with him. She declined and asked to be returned to her dorm. McLaurin refused and instead pointed a weapon at L.E. and demanded that she undress. He then blindfolded and handcuffed her to a bed and raped her. When L.E. heard a vehicle pull up to the house, McLaurin uncuffed her and instructed her not to say anything. The two then got back into

McLaurin's vehicle where McLaurin threatened to kill her. A short time later, McLaurin pulled over near the Tougaloo campus and took out a handgun and told L.E. that if she told anyone about this that he would kill her. L.E. went into her dorm and told her roommate what had happened and L.E. was taken to a hospital. L.E. gave a statement to police and they unsuccessfully attempted to find the house where the rape occurred. More than a year later, L.E. spotted McLaurin at a nightclub. She informed an off duty officer at the club and McLaurin was arrested. McLaurin's mothers house was where the rape was determined to have occurred. McLaurin was tried and convicted of rape and was sentenced to life in custody.

ISSUES

On appeal, McLaurin raised several issues. (1) ineffective assistance of counsel, (2) denial of cross-examination of the victim, (3) error in overruling his objection to remarks by the prosecutor, (4) error in failing to do a balancing test regarding prior criminal acts, (5) the photographic lineup was suggestive, and (6) cumulative error.

HOLDING

McLaurin raised twenty-three instances of ineffective assistance of counsel which the court narrowed down to McLaurin's statement that "defense counsel did little to avail himself of the evidence in the custody of the State, . . . much less conduct an independent investigation." The court held that "because we cannot address several of McLaurin ineffective assistance of counsel allegations on direct appeal, we find that McLaurin's ineffective assistance claim would be more appropriately brought in a petition for post-conviction relief, if he chooses to do so."

Next, the court addressed the issue of cross-examination. McLaurin wanted to cross-examine the victim about a gunshot wound he had to his leg at the time of the rape. However, McLaurin's counsel did ask the victim about these wounds. The court prohibited counsel from asking questions about events not in evidence. There was no error in prohibiting questions about things not in the record. This was not error.

Next, the court looked at the prosecutor's comments. McLaurin objected when the prosecutor asked McLaurin's mother details about the doctor who treated McLaurin for his gunshot wound. Also, prosecutors questioned why McLaurin did not call his treating physician. Because there was no indication to prosecutors before trial about McLaurin's gunshot wound, it was proper for them to question McLaurin's witnesses about this. It was also permissible for them to draw logical inferences from McLaurin not calling the doctor.

Next, McLaurin argued that the court erred by not conducting a balancing test regarding prior bad acts. However, McLaurin did not object to this evidence when it arose. Therefore, it is procedurally barred. Procedural bar notwithstanding, a Rule 403 balancing test is not a sua sponte act by the trial court. The burden is on the counsel to request the test and here that was not done.

Next, McLaurin argues that the photographic lineup was impermissibly suggestive because L.E. had seen him in the nightclub two days earlier. He also claims that others in the lineup were

dissimilar to him. However, McLaurin did not provide the court with the lineup for review. Therefore, this issue was not properly preserved for appeal.

Finally, McLaurin argues cumulative error. However, finding no other error, there could not be cumulative error. The conviction and sentence were affirmed.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO59096.pdf

NO. 2008-KA-01479-COA

WILLIE JACKSON APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - CONVICTED OF SALE OF COCAINE

SENTENCED AS A HABITUAL OFFENDER TO THIRTY YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS WITHOUT ELIGIBILITY FOR PAROLE OR PROBATION

TRIAL JUDGE: HON. JAMES T. KITCHENS, JR.
COURT FROM WHICH APPEALED: OKTIBBEHA COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANT: W. DANIEL HINCHCLIFF, LESLIE S. LEE
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: DEIRDRE MCCRORY
DISTRICT ATTORNEY: FORREST ALLGOOD

MYERS, P.J., FOR THE COURT
VOTES: KING, C.J., LEE, P.J., IRVING, GRIFFIS, BARNES, ISHEE, ROBERTS, CARLTON AND MAXWELL, JJ., CONCUR

FACTS

Henderson contacted authorities and told them that Jackson had called her and offered to sell her narcotics. Officers arranged a controlled buy and searched Henderson and her vehicle and gave her money with which to buy drugs. Henderson was followed by two agents and was wired with audio and video surveillance equipment. Henderson arranged to meet Jackson and he sold her a rock of crack cocaine. Agents corroborated Henderson's testimony and a lab technician confirmed that the substance purchased was cocaine. The recordings were played for the jury and Jackson was convicted and sentenced to thirty years as a habitual offender.

ISSUE

On appeal, Jackson argues prosecutorial misconduct.

HOLDING

Jackson cites numerous actions which he considers to be misconduct. He claims prosecutors used an improper "theme" to show the jury how bad drugs were in society. However, Jackson only objected to two comments. The problem for Jackson is that the grounds he cited during objections are not the same that he raises on appeal. Therefore, this issue is procedurally barred. Notwithstanding the bar, the court held that any discussion of problems with drugs in society was harmless and did not influence the jury.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO59077.pdf

NO. 2007-KA-02147-COA

CORY JERMINE MAYE APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - CONVICTED OF CAPITAL MURDER

SENTENCED TO LIFE IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS WITHOUT ELIGIBILITY FOR PAROLE

TRIAL JUDGE: HON. PRENTISS GREENE HARRELL
COURT FROM WHICH APPEALED: JEFFERSON DAVIS COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANT: ROBERT E. EVANS, ANNA W. ST. JOHN, MICHAEL SCOTT LABSON, ABRAM J. PAFFORD, BENJAMIN J. VERNIA, JESSICA D. GABEL, JAMES P. SULLIVAN
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: LADONNA C. HOLLAND
DISTRICT ATTORNEY: HALDON J. KITTRELL

DISPOSITION: REVERSED AND REMANDED: 11/17/2009

KING, C.J., FOR THE COURT

VOTES: GRIFFIS, BARNES, ISHEE AND ROBERTS, JJ., CONCUR. IRVING, J., CONCURS IN PART AND IN THE RESULT. MAXWELL, J., DISSENTS WITH SEPARATE WRITTEN OPINION JOINED BY MYERS, P.J. LEE, P.J., AND CARLTON, J., NOT PARTICIPATING

FACTS

Maye was convicted of killing a police officer in the line of duty and was sentenced to death. The trial court set aside the death penalty and sentenced Maye to life without parole. The incident occurred when officers obtained a search warrant for Maye's duplex and attempted to execute the warrant. Maye was asleep when officers arrived. Officers testified that they knocked and announced that they had a warrant. When the door did not open officers kicked it in and entered. Maye testified that he heard someone attempting to break his door and so he hid in a bedroom with a gun and his daughter asleep on a bed. When he saw someone in the house he shot. An officer was killed. Maye was arrested and held without bond. Maye filed a motion to change venue from Jefferson Davis County which was granted. Later, Maye filed a motion to change venue back to Jefferson Davis County. The court also granted this change of venue request but instead sent the case to Marion County. After a four day trial, Maye was convicted.

ISSUES

Maye raised numerous issues on appeal. However, because the court found that it error not to return the trial to Jefferson Davis County, it only addressed the issues that may be relevant upon retrial. These issues include the testimony of the expert forensic pathologist, the right to be tried in Jefferson Davis County, refusal of Maye's jury instructions, the search warrant and the motion to suppress, prosecutorial misconduct, and cruel and unusual punishment.

HOLDING

First, the court examined the testimony of Dr. Steven Hayne. Maye complains that Hayne offered impermissible testimony concerning the position of the shooter and the victim and the trajectory of the bullet. However, the court found that Hayne did not testify about the position of the shooter. Instead, he answered questions based upon a hypothetical question which is permissible. Maye's complaints center around answers Hayne gave to Maye's questions. One cannot complain of unfavorable answers to questions that he has asked. Further, the court found that Hayne did not testify untruthfully about his qualifications and he was offered and admitted as an expert without objection.

Next, the court looked at the issue of venue. The court held that Maye had a fundamental Constitutional right to be tried in Jefferson Davis County. On this issue, the court held that Maye is entitled to a new trial because of the trial court's erroneous refusal to allow his exercise of his right to be tried in Jefferson Davis County, the county wherein the offense for which he was being tried was committed. In short, a defendant is entitled to withdraw a prior waiver of a Constitutional right. That is what occurred here, and the court erred in offering no justification or analysis in refusing to return the trial to Jefferson Davis County.

Next, the court addressed the refusal of Maye's jury instructions. The court held that the trial court adequately instructed the jury on the State's burden at trial, as well as Maye's theory of self-defense. The rejected jury instructions were either improper, redundant, or unsupported by the evidence.

Regarding the search warrant and the motion to suppress, Maye argued that the warrant was issued without probable cause and he was denied the identity of the confidential informant. The court reviewed the warrant and determined that this issue was also without merit.

Next, Maye argues prosecutorial misconduct. The court examined the statements complained of and determined that this issue too is without merit.

Maye's final argument is that it was error to sentence him to life without parole. However, when the prosecution sought not to seek the death penalty, the judge had only one option for sentencing. Life without parole does not exceed the statutorily prescribed sentence and therefore it was not error to so sentence Maye. Because of the denial of the change of venue, this case is reversed and remanded.

MAXWELL, J., DISSENTING

Maxwell dissents to note disagreement with the majority's handling of the venue issue. He would find the majority incorrectly concluded that the trial judge abused his discretion in refusing to transfer the case back to Jefferson Davis County. The trial judge had previously transferred venue from Jefferson Davis County because of concerns it would be difficult to obtain an impartial jury there due to the nature of this capital-murder case and the substantial publicity.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO59522.pdf

November 24, 2009

NO. 2008-KA-00112-COA

JOHNNY CHARLES SHORTER APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - CONVICTED OF MURDER

SENTENCED TO LIFE IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS

TRIAL JUDGE: HON. SAMAC S. RICHARDSON
COURT FROM WHICH APPEALED: RANKIN COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANT: HUNTER NOLAN AIKENS
ATTORNEYS FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: JEFFREY A. KLINGFUSS
DISTRICT ATTORNEY: DAVID CLARK

MAXWELL, J., FOR THE COURT

VOTES: KING, C.J., LEE AND MYERS, P.JJ., IRVING, GRIFFIS, BARNES, ISHEE, ROBERTS AND CARLTON, JJ., CONCUR

FACTS

Shorter suspected that his wife was having an affair. He hired an attorney to represent him for divorce. One night, while drinking, Shorter confronted Beckman about sleeping with his wife. Beckman denied this and then Shorter suspected Boutwell. Shorter called his attorney and told him of his plans to kill the man. The attorney called 911 and informed authorities that his client had just threatened to kill a man. Authorities began searching for Beckman when they received a 911 call from Shorter's wife saying that Shorter had just shot Boutwell. Shorter then called his father and sister and informed them of what he had done. Shorter smoked a cigarette and waited for authorities to arrive. When deputies arrived, Shorter asked, "is the son of a bitch I shot dead?" Shorter was convicted of murder and sentenced to life in custody.

ISSUES

Shorter argues that it was error to admit the 911 call from his attorney, error to admit the 911 call of his wife, refusing a manslaughter instruction, and failing to grant a new trial.

HOLDING

First, Shorter argues that it was error to admit the call from his attorney. He claims that the court improperly admitted the recording as it was privileged and that the judge relied on ethical rules and not evidentiary rules. The court found that the information was covered by the privilege and therefore looked to see if an exception applied. The court examined the crime-fraud exception to the privilege and found that Shorter disclosed to his attorney that he was about to commit a crime and did so. The court did not err in admitting the call under this exception.

Next, Shorter complains of the admission of the call from his wife. Shorter claims that his wife's comments were protected by the spousal privilege and that her comments were testimonial in nature. The court held that because the call in question was made during an emergency the admission did not violate Rule 601 and it was properly admitted.

Further, Shorter's wife did not testify at trial and Shorter complained that the admission of the tape violated the confrontation clause. The court held that the tape was not testimonial in nature and therefore not subject to the confrontation clause. The call was made during an emergency and was to authorities about an emergency situation. It was not error to admit the call. Even had the call been suppressed, the evidence of Shorter's guilt was abundant, and so even if it were error, it would be harmless.

Next, the court looked at the denial of a manslaughter instruction. However, because of the abundant evidence of deliberate design murder, it was not error to deny the manslaughter instruction.

Finally, the court reviewed the weight of the evidence. In viewing the evidence in a light most favorable to the verdict, allowing it to stand would not sanction an unconscionable injustice. The evidence of guilt was overwhelming.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO59291.pdf

NO. 2008-KA-00762-COA

ANTHONY LEE TUCKER APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - CONVICTED OF POSSESSION OF STOLEN PROPERTY

SENTENCED AS A HABITUAL OFFENDER TO TEN YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS WITHOUT ELIGIBILITY FOR PAROLE, PROBATION, OR EARLY RELEASE, AND TO PAY A FINE OF $10,000 UPON RELEASE FROM CONFINEMENT

TRIAL JUDGE: HON. LEE J. HOWARD
COURT FROM WHICH APPEALED: CLAY COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: LESLIE S. LEE
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: JEFFREY A. KLINGFUSS
DISTRICT ATTORNEY: FORREST ALLGOOD

ROBERTS, J., FOR THE COURT
VOTES: KING, C.J., LEE AND MYERS, P.JJ., IRVING, GRIFFIS, BARNES, ISHEE, CARLTON AND MAXWELL, JJ., CONCUR.

FACTS

The Foot Gear store in West Point was burglarized and more than $100,000 of merchandise was taken. About one week later, authorities received an anonymous call that Tucker was storing large amounts of stolen athletic clothing at his residence. Tucker was on parole form Wisconsin. Tucker lived with his sister Christann and her husband Gibbs. He lived in a shed behind the home. When officers arrived they entered the shed and noticed new athletic gear. They did not need a search warrant to enter as Tucker was on parole and thus consented to monitoring. Christiann and Gibbs did not consent to a search of their home so officers obtained a warrant. Inside they found large quantities of new athletic gear. Officers also observed a burn pile in the yard that contained commercial hangers and items. Tucker was convicted and sentenced to ten years as a habitual offender.

ISSUES

Tucker appeals, arguing that: (1) the evidence was legally insufficient to support the verdict or, in the alternative, the verdict is against the overwhelming weight of the evidence; (2) he was

improperly charged because the State's theory of the case was that Tucker actually stole the property; (3) in the alternative, the indictment was insufficient to charge the crime for which he was convicted; (4) the trial judge erred in refusing jury instructions D-2A and D-3, and granting instructions S-3 and S-4; (5) the trial judge erred in failing to sustain a defense objection during the State's closing argument; (6) he was deprived of effective assistance of counsel, thereby depriving him of his constitutional right to a fair trial; and (7) cumulative error demands a new trial.

HOLDING

First, the court examined the weight and sufficiency of the evidence. Tucker argued that the case should never have gone to the jury as the evidence was insufficient to show that he possessed stolen merchandise. The court reviewed the evidence and found that Tucker was found to be in possession of the merchandise. It was located in the shed in which he was living and he had access to the home. It was sufficient to sustain the conviction.

As for the weight of the evidence, the court looked at the many facts in support of the conviction. Tucker argued that the only evidence against him was the hearsay testimony of a confidential informant. The court found much more evidence and found the weight to be overwhelming.

Next, the court examined whether Tucker was improperly charged as the state's theory was that he stole the property. Tucker originally told police that he received the merchandise from two guys in a white van and that the merchandise was not stolen. The court found that although some evidence of the burglary was described, Tucker was tried for possession of stolen property and it was not error to describe the burglary.

Next, Tucker claimed that the indictment was not sufficient in that it failed to describe the property he was charged with possessing. He argued that the indictment merely said that he possessed athletic equipment with a value in excess of $500.00 and did not list the items individually. The court examined the indictment and found that this is exactly what Tucker was convicted of. The purpose of the indictment is to put the defendant on notice of the charge and he was so apprised. Accordingly, this issue is without merit.

Next, the court examined the jury instructions. Tucker claims that he was denied an instruction that presented his theory of the case and the other instructions were confusing. The court examined the instructions and looked at them as a whole. The jury instructions accurately reflected the law and clearly informed the jury, and when read as a whole, the instructions were not conflicting or confusing. Therefore, this issue is without merit.

Next, Tucker claims that the court erred in not sustaining an objection to the state's closing argument. The court reviewed the argument and found that the statement was not improper. Considering the wide latitude given during argument the argument was not out of bounds and there was no plain error.

Next, the court examined whether Tucker received ineffective assistance of counsel. However, the record is not adequate to make this determination at this time. The conviction is affirmed without prejudice in order to allow Tucker to raise this issue in PCR proceedings.

Finally, the court examined cumulative error. Having found no reversible error in part, there was no cumulative error. The conviction and sentence was affirmed.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO59469.pdf

NO. 2008-KA-01056-COA

ANTHONY TREVILLION APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - CONVICTED OF COUNT I, MURDER, COUNT II, SHOOTING INTO AN OCCUPIED DWELLING, COUNT III, AGGRAVATED ASSAULT, COUNT IV, AND COUNT V, POSSESSION OF A FIREARM BY A CONVICTED FELON

SENTENCED TO LIFE ON COUNT I; TO TEN YEARS ON COUNT II; TWENTY YEARS ON COUNT III, TWENTY YEARS ON COUNT IV; AND THREE YEARS ON COUNT V, ALL IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS WITH THE SENTENCES IN COUNTS II, III, IV, AND V TO RUN CONSECUTIVELY TO THE SENTENCE IN COUNT I

TRIAL JUDGE: HON. FRANK G. VOLLOR
COURT FROM WHICH APPEALED: WARREN COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: JUSTIN TAYLOR COOK
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: STEPHANIE BRELAND WOOD
DISTRICT ATTORNEY: RICHARD EARL SMITH, JR.

KING, C.J., FOR THE COURT
VOTES: LEE AND MYERS, P.JJ., IRVING, GRIFFIS, BARNES, ISHEE, ROBERTS, CARLTON AND MAXWELL, JJ., CONCUR

FACTS

Harris, Bowman, and Bunch were at a nightclub when they were confronted by Trevillion. The three left the club and went to Harris' home. Trevillion approached the home with others and began firing. Harris was shot three times and died. Trevillion was indicted and convicted for aggravated assault, murder, shooting into a dwelling, and possession of a firearm by a felon. He was sentenced to life for the murder and consecutive terms for the other convictions.

ISSUE

On appeal, Trevillion argues that the court erred in excusing two jurors that had previously served on a jury within the previous two years.

HOLDING

Section 13-5-23 provides that a juror who has served on a case within the previous two years may claim a privilege from having to serve again. The exemption is not mandatory but may be claimed by the individual juror. The trial judge improperly informed the jurors that they must be excluded if they had served within two years. However, there was no objection to the dismissal of the jurors. Therefore, Trevillion is procedurally barred from raising this issue. Further, there is nothing in the record to suggest that the jury which heard the case was not fair and impartial. Therefore, this issue is without merit. The conviction and sentence is affirmed.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO59285.pdf

December 1, 2009

NO. 2008-KA-01977-COA
RAY THOMAS GORE APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL – FELONY - MURDER

SENTENCED TO LIFE IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS

TRIAL JUDGE: HON. MARCUS D. GORDON
COURT FROM WHICH APPEALED: SCOTT COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: EDMUND J. PHILLIPS, JR.
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: LISA LYNN BLOUNT
DISTRICT ATTORNEY: MARK SHELDON DUNCAN

ROBERTS, J., FOR THE COURT

VOTES: KING, C.J., LEE AND MYERS, P.JJ., IRVING, GRIFFIS, BARNES, ISHEE, CARLTON AND MAXWELL, JJ., CONCUR.

FACTS

Gore and Ford spent the afternoon and evening drinking while watching Ford's child. Ford left the apartment for a period of time with another man. When she did not return, Gore went looking for her. Gore and Ford argued and Gore pulled out a rifle. The gun discharged and Ford was shot in the head and died. Gore claimed it was an accident. Dr. Hayne testified that the gun was in contact with Ford's head when it discharged and that the shooting could not have been an accident. Gore gave a statement admitting the shooting but claiming that it was an accident.

ISSUES

Gore argued that the court erred when he was denied a lesser included offense instruction on manslaughter and a circumstantial evidence instruction.

HOLDING

As for the manslaughter instruction, the trial court held "There's absolutely no evidence of manslaughter in this case. The only evidence in this case is deliberate design or acts of misfortune. But there's no - - no evidence of manslaughter." The manslaughter instruction here was offered by the state. Therefore, the issue is procedurally barred because no instruction was offered on this issue by Gore.

As for a circumstantial evidence instruction, the trial court held that it is not applicable when there is a confession. The court held that where "the only element proven entirely by circumstantial evidence was that of intent . . . . it was proper to refuse a request for a circumstantial[-]evidence instruction." Therefore, the court found no error in the refusal of the circumstantial evidence instruction. The conviction and sentence was affirmed.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO59808.pdf

NO. 2008-KA-01649-COA

CHARLES WAYNE ROSS APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL – FELONY - MURDER

SENTENCED AS A HABITUAL OFFENDER TO LIFE IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS WITHOUT ELIGIBILITY FOR PAROLE OR EARLY RELEASE

TRIAL JUDGE: HON. ANDREW K. HOWORTH
COURT FROM WHICH APPEALED: TIPPAH COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: GEORGE T. HOLMES
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL

BY: STEPHANIE BRELAND WOOD
DISTRICT ATTORNEY: BENJAMIN F. CREEKMORE

GRIFFIS, J., FOR THE COURT

VOTES: KING, C.J., LEE AND MYERS, P.JJ., IRVING, BARNES, ISHEE, ROBERTS, CARLTON AND MAXWELL, JJ., CONCUR

FACTS

Yancey was shot four times and killed in his home. Leads directed investigators to Ross. Ross was found to be in possession of a television and VCR which were taken from Yancey's home. Ross was also seen with a wallet and identification cards belonging to Yancey. Witnesses also saw a vehicle similar to Ross' near Yancey's home at the time of the murder. Payne testified that Ross burned the wallet and identification on a grill and admitted that he had killed someone. A gun matching the one that killed Yancey was found behind the home in which Ross lived. Beer cans that matched a can found in Yancey's home was also found in Ross' vehicle.

ISSUES

Ross appeals and claims that: (1) the trial court denied him the right to confront the witnesses against him when it limited cross-examination of these witnesses; (2) he was prejudiced by testimony regarding his bad character and a prior conviction; (3) the verdict is not supported by the weight of the evidence; (4) the cumulative effect of the trial court's errors on the admissibility of evidence rendered his trial unfair; (5) his expert witness was erroneously excluded; (6) the trial court erred when it refused to suppress evidence gathered from his car in a warrantless automobile search; and (7) the trial court erred when it refused jury instruction D-6.

HOLDING

The first issue examined by the court was whether Ross was denied the right to confront a witness against him. Ross argues that he was limited in his cross-examination. He claims that he was denied the ability the cross-examine Sanders on a prior burglary. The court held this to be error but harmless because Sanders testified in Ross' first trial and Ross did not raise this line of questioning.

Next, Ross argues that he should have been allowed to cross-examine Sheriff Mauney about a prior drug conviction. The court held this conviction to be significantly remote in time and thus inadmissible.

Next, Ross argues that he should have been allowed to cross-examine Clark on a forty-four year old kidnaping conviction. The court held this conviction to also be too remote in time to be admissible.

Next, Ross argues that he should have been allowed to cross-examine Whitehead on a prior drug conviction. Again, as this conviction was more than twelve years old, it was not admissible.

Next, Ross argues that he was limited in his examination of Dr. Hayne in discussing his removal from the list of approved pathologists. Specifically, Ross was not allowed to examine Hayne about a report issued by the Commissioner of Public Safety which criticized Hayne. The court limited the examination to Hayne's training, education and experience. The court held that if this was error then it was harmless error as Hayne was called to testify about the cause and manner of death.

Finally, on this issue, Ross complains that he should have been allowed to cross-examine Payne on a prior inconsistent statement. However, the court held that Payne actually admitted making prior inconsistent statements and therefore, it was not error to restrict testimony on this point.

Next, Ross argues that he was prejudiced by testimony about his prior bad conduct and a prior conviction. Specifically, Ross claims that the state elicited testimony that he wanted to kill the man that killed his sister. However, Ross did not object at trial to this statement and the court held the issue to be procedurally barred.

Further, Ross complains that he was prejudiced by testimony that he had previously served jail time. Here, a witness responded to a question from Ross' counsel, stating that he worked on Ross' vehicle while Ross was in prison. Ross requested a mistrial which was denied. Because the same question was asked and the same answer was given in the first trial, Ross could have taken steps to restrict this answer. He did not and it was not error to deny the motion for mistrial.

Next, Ross argued the weight of the evidence. The court reviewed all of the evidence and held that allowing the verdict to stand does not sanction an unconscionable injustice.

Next, Ross argued cumulative error. The court reviewed the evidence and the issues raised by Ross. The court found that each of Ross's assignments of error is without merit. "As there was no reversible error in any part, so there is no reversible error to the whole."

Next, Ross complains that his expert, Wells, was improperly excluded. The court held that much of Wells' testimony was covered by the testimony of state witnesses and therefore, it was not error to exclude Wells.

Next, Wells argues that it was error to fail to suppress evidence gathered from Ross's vehicle in a warrantless search. This issue was addressed on appeal of Ross's first conviction and the court held that consent was given to search the vehicle by Ross's brother who was in possession of the vehicle. Therefore, this issue is without merit.

Finally, Ross argues that it was error to refuse his instruction on witness demeanor and conflicting testimony. The court reviewed the instructions given and held that the instruction requested by Ross was fairly covered by other instructions. Therefore, it was not error to deny this instruction. The conviction and sentence were affirmed.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO58958.pdf

NO. 2008-KA-01387-COA

FELIX PERKINS APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL – FELONY - CONVICTED OF SELLING, TRANSFERRING, OR DELIVERING COCAINE WITHIN 1,500 FEET OF A CHURCH

SENTENCED AS A HABITUAL OFFENDER TO THIRTY YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS

TRIAL JUDGE: HON. CHARLES E. WEBSTER
COURT FROM WHICH APPEALED: COAHOMA COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT: LESLIE S. LEE
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: BILLY L. GORE
DISTRICT ATTORNEY: LAURENCE Y. MELLEN

IRVING, J., FOR THE COURT

VOTES: KING, C.J., LEE AND MYERS, P.JJ., GRIFFIS, BARNES, ISHEE, CARLTON AND MAXWELL, JJ., CONCUR. ROBERTS, J., SPECIALLY CONCURS WITH SEPARATE WRITTEN OPINION JOINED BY GRIFFIS, J., AND JOINED IN PART BY MAXWELL, J.

FACTS

Hollingsworth worked as an undercover informant for the Clarksdale police department making drug buys. Hollingsworth was wired and given money to make a drug buy. He was approached by Perkins who sold him a "white rock-like substance." The substance tested positive for cocaine. The sale occurred near a church. Perkins admitted to selling sheetrock to Hollingsworth. Perkins was indicted and convicted for selling cocaine within 1500 feet of a church.

ISSUES

Perkins agues that the conviction is against the weight of the evidence and that he received ineffective assistance of counsel.

HOLDING

First, the court examined the weight of the evidence. Specifically, Perkins argues that the state did not prove the distance from the point of sale to the church. The court reviewed the record and held that although the testimony was contradictory, there was evidence of the sale near a church and this was for a jury to decide. They did so and found against Perkins.

Next, the court examined ineffective assistance of counsel. The court examined this issue and determined that it could not conclude from the record whether counsel was ineffective, this issue was not decided and is preserved for post-conviction proceedings.

ROBERTS, J., SPECIALLY CONCURRING

The concurring opinion argues that the thirty year sentence without the possibility of parole is not harsh enough. They argue that because Perkins had two prior felony convictions that he should have had his sentence doubled to sixty years. The concurrence argues that this is not discretionary with the trial court, but since the state did not raise this issue on appeal nothing can be done about it.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO59677.pdf

NO. 2008-KA-00697-COA

RICHARD ANDERSON APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - CONVICTED OF CONSPIRACY TO SELL A CONTROLLED SUBSTANCE

SENTENCED TO FIVE YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS AND TO PAY A $1,000 FINE, $125 RESTITUTION TO THE HORN LAKE POLICE DEPARTMENT, AND $200 TO THE MISSISSIPPI CRIME VICTIMS' COMPENSATION FUND

TRIAL JUDGE: HON. ROBERT P. CHAMBERLIN
COURT FROM WHICH APPEALED: DESOTO COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: B. BRENNAN HORAN
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: LADONNA C. HOLLAND
DISTRICT ATTORNEY: JOHN W. CHAMPION

MYERS, P.J., FOR THE COURT

VOTES: KING, C.J., LEE, P.J., IRVING, GRIFFIS, BARNES, ISHEE, ROBERTS, CARLTON AND MAXWELL, JJ., CONCUR

FACTS

Holt worked as a confidential informant for the Horn Lake police department. Holt contacted Kristina Anderson and indicated that he wanted to but hydrocodone. He waited at the Anderson's home for Richard to arrive. Holt went into a back room with Kristina who sold him fifteen pills. Richard sold Holt one pill. The pills sold by Kristina tested positive for hydrocodone but the pill sold

by Richard could not be confirmed to be hydrocodone. Richard was indicted for sale of a controlled substance and conspiracy to sell. He was convicted solely for the conspiracy.

ISSUES

On appeal, Anderson argues that the evidence was not sufficient to sustain the conviction.

HOLDING

The court reviewed all of the evidence and held that Kristina's testimony, coupled with the other evidence presented at trial, sufficiently supports the jury's finding that she and Anderson engaged in a common plan or scheme to sell hydrocodone pills to willing buyers. Accordingly, the trial court did not err in denying Anderson's motion for a directed verdict and his motion for a judgment notwithstanding the verdict. This issue is without merit.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO59375.pdf

NO. 2008-KA-01767-COA

JAMES CALVIN WILLIAMS APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL – FELONY - CONVICTED OF POSSESSION OF A FIREARM BY A CONVICTED FELON

SENTENCED AS A HABITUAL OFFENDER TO TEN YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS WITHOUT ELIGIBILITY FOR PROBATION, PAROLE, OR EARLY RELEASE

TRIAL JUDGE: HON. ROBERT B. HELFRICH
COURT FROM WHICH APPEALED: FORREST COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: HUNTER NOLAN AIKENS
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: JOHN R. HENRY JR.
DISTRICT ATTORNEY: JON MARK WEATHERS

DISPOSITION: HABITUAL OFFENDER STATUS REVERSED

KING, C.J., FOR THE COURT

VOTES: LEE AND MYERS, P.JJ., IRVING, GRIFFIS, BARNES, ISHEE, ROBERTS, CARLTON AND MAXWELL, JJ., CONCUR

FACTS

Williams was riding his bicycle at 2:30 a.m. when officers tried to pull him over for questioning. Williams resisted and continued riding when officers verbally asked him to stop. Williams attempted to flee but crashed his bicycle fifty yards from the officers. As they approached Williams, a handgun fell from Williams waist band. A background check was run and Williams was determined to be a convicted felon. He was arrested for possession of a weapon by a felon and was convicted and sentenced as an habitual offender.

ISSUES

Williams appeals raising the following assignments of error: (1) the State failed to establish that Williams was a habitual offender under Mississippi Code Annotated section 99-19-81; (2) the trial court erred in overruling Williams's motion to suppress; and (3) the trial court erred in allowing the State's expert, Mark Mitchell, to testify as to his trace of the gun's history of ownership.

HOLDING

First, the court examined whether the state failed to establish that Williams was an habitual offender. In reviewing the record, the court determined that the state failed to introduce proof of two prior convictions of Williams. They did introduce one prior conviction but failed to introduce proof of the second conviction. Therefore, the state failed to prove that Williams was a habitual offender.

Next, Williams argued that the court erred in overruling his motion to suppress. Williams argues that officers acted unreasonably in stopping and detaining him. The court held that officers were correct in attempting to briefly detain and question Williams because of the situation. It was 2:30 a.m. and Williams was riding without a light or reflectors in a high crime area. When Williams fled it also caused reason to further investigate. The gun was not obtained as a result of a search. It fell from Williams waist band and thus was in plain sight. They were entitled to stop Williams for violation of a municipal ordinance. This issue is without merit.

Finally, Williams complains that the court erred in allowing an officer to testify to the gun's ownership history. The officer began testifying and Williams objected. The court sustained Williams objection. The jury was instructed to disregard the evidence. Therefore, there was no error. The conviction was affirmed but the sentence as an habitual offender was reversed.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO59627.pdf

NO. 2009-KA-00332-COA

GLENN PAYTON, JR. APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL – FELONY - CONVICTED OF STATUTORY RAPE

SENTENCED TO THIRTY YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS

TRIAL JUDGE: HON. ROBERT B. HELFRICH
COURT FROM WHICH APPEALED: FORREST COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANT: GLENN PAYTON, JR. (PRO SE), GEORGE T. HOLMES
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: CHARLES W. MARIS, JR.
DISTRICT ATTORNEY: JON MARK WEATHERS

KING, C.J., FOR THE COURT

VOTES: LEE AND MYERS, P.JJ., IRVING, GRIFFIS, BARNES, ISHEE, ROBERTS, CARLTON AND MAXWELL, JJ., CONCUR

FACTS

Thirty-seven year old Payton lived with his girlfriend and her three daughters. One of the daughters was a fifteen year old who became pregnant. The daughter informed the mother that Payton was the father. The mother brought the daughter to authorities who heard her story. Payton was indicted for statutory rape and convicted. He was originally indicted for rape of a child under fourteen, but when prosecutors realized the error they dismissed the indictment and re-indicted Payton. He was originally sentenced to life in prison but the judge realized this error and the next day re-sentenced Payton to thirty years. On appeal, counsel filed a *Lindsey* brief.

ISSUES

Appellate counsel filed a brief indicating that there were no issues worthy of appeal. However, Williams acting pro se filed a brief of his own raising the following issues: I. Whether Payton's indictment was defective; II. Whether the indictment was improperly amended; III. Whether Payton was deprived of his right to a speedy trial; IV. Whether there was prosecutorial misconduct; and V. Whether Payton received ineffective assistance of counsel.

HOLDING

First, the court examined the record pursuant to the procedures set forth in *Lindsey.* After a detailed review of the record, no supplemental briefing was required and the conviction and sentence was affirmed.

Next, the court looked at the issues raised pro se by Williams. First, the court examined whether the indictment was defective. Williams complains that he was indicted for rape of a child under fifteen. However, this indictment was dismissed and Williams was tried on a second indictment.

Next, Payton complains that the indictment was improperly amended. The court held that the indictment which corrected the error in listing the appropriate statute was one of form and not substance and thus not improper.

Next, Payton complains of a speedy trial violation. Payton was arraigned for his indictment on September 18, 2008 and tried on January 7, 2009. This was well within the 270 day statutory period for a speedy trial.

Next, Payton complains of prosecutorial misconduct. The instance of misconduct relate to the indictment. The court having previously found that there was no error with the indictment did not find prosecutorial misconduct.

Finally, Payton complains of ineffective assistance of counsel. After a review of the record, the court finds no instances of ineffective conduct and Payton points to no specific errors. Therefore, this issue is also without merit.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO59628.pdf

December 8, 2009

NO. 2007-KA-02300-COA

WANDA LEONA BLAKENEY APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - CONVICTED OF TWO COUNTS OF MURDER

SENTENCED TO LIFE FOR EACH COUNT TO RUN CONSECUTIVELY IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS

TRIAL JUDGE: HON. BILLY JOE LANDRUM
COURT FROM WHICH APPEALED: JONES COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: DANIEL DEWAYNE WARE
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: JEFFREY A. KLINGFUSS
DISTRICT ATTORNEY: ANTHONY J. BUCKLEY

BARNES, J., FOR THE COURT

VOTES: KING, C.J., LEE AND MYERS, P.JJ., GRIFFIS, ISHEE, ROBERTS, CARLTON AND MAXWELL, JJ., CONCUR. IRVING, J., CONCURS IN PART AND IN THE RESULT.

FACTS

Blakeney and her husband, Christopher, were indicted for the murder of her grandmother and grandfather. The Blakeney's lived with the grandparents in the grandparents home. Blakeney had withdrawn $26,000 from the grandparents bank account and the bank alerted the grandparents. A short time later Blakeney and Christopher killed the grandparents. The couple used a taser to immobilize the older couple and strangle them. The Blakeney's then placed the bodies of the grandparents in a vehicle and attempted to stage a one vehicle accident. Fireworks and other flammable items were placed in the vehicle and ignited. Blakeney gave conflicting statements to authorities but ultimately confessed to the murders. Blackeney was tried and convicted and sentenced to two consecutive life sentences.

ISSUES

Blakeney argues the weight and sufficiency of the evidence, the failure to redact prejudicial video evidence, the admission of video tape evidence, and cumulative error.

HOLDING

Although the notice of appeal was filed one day late, the court suspended the rules and found that it had jurisdiction to hear this appeal.

As for the sufficiency of the evidence, Blakeney argues that the indictments listed the cause of death as suffocation. However, the expert testimony showed that the couple died of "manual strangulation." The court reviewed the testimony and found that there was sufficient proof of both suffocation and strangulation and that the evidence was sufficient to sustain the conviction.

As for the weight of the evidence, Blakeney argued that it was "circumstantial at best." The court reviewed the evidence and found that to allow the verdict to stand did not sanction an unconscionable injustice.

Next, Blakeney argues that prosecutors should have redacted video taped questioning of Blakeney because authorities charged on the tape that Christopher had implicated her in the deaths. The court noted that the admission of evidence is reviewed under an abuse of discretion standard. The court stated that if it was error to admit these statements then such admission was harmless error. Further, the court found the admission not to be an abuse of discretion by the trial judge.

Next, Blakeney claims that it was error to admit the first video statement she gave because she had not been advised of her Miranda rights. The court held that because Blakeney was not in custody during the first interview, it was not necessary to advise her of her rights. Therefore, it was not error to allow the admission of the video into evidence.

Finally, Blakeney argues cumulative error. However, because the court found no errors then the argument of cumulative error was without merit.

To View the Full Opinion Click Below:

http://www.mssc.state.ms.us/Images/Opinions/CO60164.pdf

NO. 2008-KA-00387-COA

GREGORY WAYNE HUDSON APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - CONVICTED OF CULPABLE NEGLIGENCE MANSLAUGHTER

SENTENCED TO TWENTY YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS, WITH SIX YEARS SUSPENDED AND FIVE YEARS OF POST-RELEASE SUPERVISION, AND TO PAY A $2,000 FINE AND $7,265 IN RESTITUTION

TRIAL JUDGE: HON. JAMES SETH ANDREW POUNDS
COURT FROM WHICH APPEALED: ITAWAMBA COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: WILLIAM C. STENNETT
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: STEPHANIE BRELAND WOOD
DISTRICT ATTORNEY: JOHN RICHARD YOUNG

KING, C.J., FOR THE COURT

VOTES: IRVING, GRIFFIS, BARNES, ISHEE, ROBERTS AND MAXWELL, JJ., CONCUR. CARLTON, J., DISSENTS WITH SEPARATE WRITTEN OPINION JOINED BY LEE AND MYERS, P.JJ.

FACTS

Hudson and Holcomb were involved in an automobile accident on a narrow two lane unmarked road. Holcomb died as a result of the accident. When officers arrived they noticed that Hudson was "delirious." Nonetheless, they requested that Hudson consent to drug testing which he did. No alcohol was found in Hudson's system but he did test positive for barbiturates. An expert reconstructionist testified that Hudson was driving too fast for road conditions and in the wrong lane. He was convicted of culpable negligence manslaughter and sentenced to twenty years with six years suspended.

ISSUES

On appeal, Hudson argues errors in the granting and denial of jury instructions along with the weight and sufficiency of the evidence.

HOLDING

In reviewing the issue of jury instructions, the court reads all of the instructions as a whole to see if they fairly announce the law and create no injustice. Hudson's defense in this case was that he was not under the influence of drugs at the time of the accident. Indeed the level of drugs found in his system were minimal. Hudson submitted a jury instruction on this defense. It was denied. Because the indictment in this case cites to drug use and a state offered jury instruction also cites to drug use, it was improper to deny Hudson his theory of defense instruction on this issue. Because Hudson was denied an instruction on his theory of defense, the case is reversed and remanded for a new trial.

CARLTON, J., DISSENTING:

The dissent finds no error in the denial of Hudson's jury instruction and would affirm the conviction.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO59287.pdf

December 15, 2009

NO. 2008-KA-01348-COA

FONSHANTA ANTHONY APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - FELONY CHILD ABUSE

SENTENCED TO TWENTY YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS

TRIAL JUDGE: HON. ANDREW K. HOWORTH
COURT FROM WHICH APPEALED: MARSHALL COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: HUNTER NOLAN AIKENS
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: LAURA HOGAN TEDDER
DISTRICT ATTORNEY: BENJAMIN F. CREEKMORE

MAXWELL, J., FOR THE COURT

VOTES: KING, C.J., LEE AND MYERS, P.JJ., IRVING, BARNES, ISHEE, ROBERTS AND CARLTON, JJ., CONCUR. GRIFFIS, J., CONCURS IN RESULT ONLY.

FACTS

Anthony's nine month old son, B.A. was severely burned over fifty percent of his body. Anthony gave varying statements about how the burns occurred but basically said that she left B.A. and his two year old brother alone in a bathtub and that somehow one of them turned on the hot water. B.A. was admitted to two burn hospitals and doctors noted that Anthony's story was not consistent with the burns on the child. Experts testified that the burns were more likely to have occurred by forcibly holding the child down in scalding water. Anthony was tried and convicted of felony child abuse and sentenced to twenty years.

ISSUES

On appeal, Anthony argues the weight and sufficiency of the evidence, and that the court erred in admitting a medical report citing abuse and neglect.

HOLDING

The first issue examined by the court was the admission of the medical report. Anthony argued that the report contained hearsay. The court examined the report and agreed that it contained hearsay but held that it was not error to admit the report as it met certain exceptions to the rule against hearsay. Several exceptions were applicable to the report including 803(6) business records, and 803(4) statements made for purposes of treatment. Further, the court held that even if admission of the record was error, then it was merely harmless error.

Further, Anthony argues that she was denied the opportunity to confront witnesses against her by the admission of the report. She argues that testimony was admitted against her and she was not allowed to cross-examine the person making the statements. The court held that the report was not testimonial in nature but was made for the treatment of her child. Further, Anthony had an opportunity to cross-examine the doctor who sponsored the report. Also, a violation of the right to confront witnesses may be deemed harmless error. The admission of the report did not result in a miscarriage of justice.

Also, Anthony claimed that the report violated the scope of Rules 702 and 703. However, Anthony did not make a contemporaneous objection and this issue was waived.

Finally, the court examined the weight and sufficiency of the evidence. After reviewing the record, the court found that the evidence was indeed sufficient and that allowing the verdict to stand does not sanction an unconscionable injustice.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO59789.pdf

NO. 2008-KP-00227-COA

BRIDGIT WILLIAMS APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - FELONY SHOPLIFTING

SENTENCED AS A HABITUAL OFFENDER TO TEN YEARS IN THE CUSTODY OF MISSISSIPPI DEPARTMENT OF CORRECTIONS WITHOUT ELIGIBILITY FOR PAROLE OR PROBATION AND TO PAY A FINE OF $10,000

TRIAL JUDGE: HON. SAMAC S. RICHARDSON
COURT FROM WHICH APPEALED: MADISON COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: BRIDGIT WILLIAMS (PRO SE)
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: LAURA HOGAN TEDDER
DISTRICT ATTORNEY: DAVID CLARK

BARNES, J., FOR THE COURT

VOTES: KING, C.J., LEE, P.J., IRVING, ISHEE AND CARLTON, JJ., CONCUR. ROBERTS, J., DISSENTS WITH SEPARATE WRITTEN OPINION JOINED BY MYERS, P.J., GRIFFIS AND MAXWELL, JJ.

FACTS

Williams was arrested for felony shoplifting over $500 worth of merchandise from Dillard's department store. This was her second felony shoplifting and third felony. Therefore, the state sought to prosecute her as an habitual offender. Her trial began on February 3, 2005, but during a recess Williams left the courthouse and did not return. The trial continued in abstentia and Williams was convicted. She was sentenced to 10 years and her attorney filed a motion for a new trial which was not ruled upon. She was eventually detained in Tennessee in August of 2006. After she was taken into custody, she retained new counsel who filed an amended motion for a new trial. Her motion was denied by the trial court.

ISSUES

The court examined whether Williams was properly sentenced as an habitual offender, whether her sentence was unconstitutionally cruel and unusual, and whether the court had jurisdiction to hear the appeal.

HOLDING

As for jurisdiction, the court noted the unusual procedural history of the case in that the motion for a new trial was not originally ruled upon and an amended motion was filed several years later. Ultimately, the court held that in the interest of judicial economy it would hear the appeal as the denial of jurisdiction would simply lead to PCR motions.

Next, the court examined whether it was error to sentence Williams as an habitual offender. Williams argues that because her previous sentences were served concurrently, that she did not serve

one year for each crime. The court held that the statute requires that one be "sentenced" to one year for each crime. It does not require one to "serve" separate sentences.

Finally, the court examined whether Williams' sentence was cruel and unusual. Williams argues that her sentence exceeds the maximum allowed by law. The statute provides for a sentence for felony shoplifting to be the same as a sentence for grand larceny. Because Williams was sentenced as an habitual offender, the court was required to sentence her to the maximum. In this case the maximum sentence was ten years and therefore, the sentence is within the statutory requirements.

ROBERTS, J., DISSENTING:

The dissenters would have dismissed the appeal for lack of jurisdiction and would not address the appeal on its merits.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO60137.pdf

NO. 2008-KA-00944-COA

PATRICIA ANN BROWN APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - POSSESSION COCAINE

SENTENCED AS A HABITUAL OFFENDER TO LIFE IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS WITHOUT ELIGIBILITY FOR PAROLE OR PROBATION

TRIAL JUDGE: HON. THOMAS J. GARDNER III
COURT FROM WHICH APPEALED: PONTOTOC COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANT: JIM WAIDE
ATTORNEYS FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: LAURA HOGAN TEDDER
DISTRICT ATTORNEY: JOHN RICHARD YOUNG

BARNES, J., FOR THE COURT

VOTES: KING, C.J., LEE AND MYERS, P.JJ., IRVING, GRIFFIS, ISHEE, ROBERTS, CARLTON AND MAXWELL, JJ., CONCUR.

FACTS

Holesome was engaged in a sexual relationship with Rippley although he was married to Melanie. One night, while Holesome and Rippley were sleeping together, Brown arrived and began smoking cocaine with the two. Brown then asked Holesome to accompany her to purchase more cocaine. They left Rippley, who became angry that Holesome left with Brown. Rippley left the premises and was pulled over by police. Rippley told them about Brown and Holesome's drug use. Authorities went to the residence and found Melanie outside. They called for Holesome and Brown to come out. Holesome was found to be in possession of two knives, and as a convicted felon he was arrested. Brown emptied her pockets and officers observed a rock of cocaine fall from her pocket. Melanie also observed the cocaine. Authorities were granted permission to search the residence and additional cocaine was found. Holesome admitted that the additional cocaine was his. Both Holesome and Brown were indicted as habitual offenders and faced life in prison. Holesome pled guilty to possession in exchange for prosecutors dropping the habitual offender status and he was sentenced to eight years. Brown was tried and convicted and sentenced to life in prison.

ISSUES

Brown appeals asserting that the indictment was insufficient to notify her of the nature of the charge, that her trial was fundamentally unfair, that her sentence was harsher than Holesome's because she refused to plead guilty, and that her sentence was disproportionate.

HOLDING

First, Brown claims that the indictment fails to put her on notice of the charges against her. The court noted that Brown did not object to the form of the indictment either prior to or during trial and has not identified any prejudice she may have suffered as a result of the form of the indictment. Therefore, this issue is without merit.

Next, Brown claims that prosecutorial misconduct resulted in an unfair trial. She claims three areas of misconduct. First, Brown claims that allusions to a sexual relationship between Brown and Holesome created an unfair trial. Prosecutors repeatedly asked about the sexual nature of the relationship between Brown and Holesome. Each time an objection was raised and sustained by the trial court. The court noted that prosecutors appeared to make this line of questioning solely to assail Brown's character. Further, because Brown is Caucasian and Holesome is African-American, Brown claims that prosecutors merely wanted to further prejudice Brown in the eyes of the jury. However, the court noted that the trial judge sustained each objection to this line of questioning and properly instructed the jury to not consider this information in deliberations. Further, defense counsel did not request a mistrial. Therefore, this issue is without merit.

Second, Brown claims that because prosecutors informed the jury that Holesome pleaded guilty she was further prejudiced. However, Brown did not object to this testimony at trial. Further, defense counsel opened the door to the guilty plea by questions asked on cross-examination. Also, the cocaine that Holesome pled guilty to possessing was different from the cocaine Brown was accused of possessing. Therefore this issue is without merit.

Third, Brown claims her trial was unfair because of evidence of other cocaine. However, the trial court held that the evidence of additional cocaine was only to tell a complete story. Further, the jury was instructed that Brown was only charged with the cocaine in her pocket.

Next, Brown contends that her sentence was harsher than Holesome's because she refused to plead guilty. Brown noted that Holesome was sentenced to eight years after his guilty plea. Brown was sentenced to life after trial. However, because of the habitual offender status, the trial judge lacked discretion in sentencing Brown. The judge was required to sentence Brown to the maximum sentence. While the sentences were dramatically different, Brown is not Constitutionally entitled to a plea bargain and there is nothing in the record to indicate that the state's actions were vindictive or an attempt to punish Brown for not pleading guilty.

Finally, the court examined whether Brown's sentence was grossly disproportionate. The court held that Brown's sentence conforms to the requirements of the habitual offender statute, and the circuit court thoroughly considered Brown's sentence in light of the facts and her previous criminal history. Accordingly, the court could not conclude that Brown received a grossly disproportionate sentence. The conviction and sentence was affirmed.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO60652.pdf

NO. 2008-KA-00811-COA

DAMITA ANN HILL APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - FELONIOUS CHILD ABUSE

SENTENCED TO TWENTY YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS

TRIAL JUDGE: HON. STEPHEN B. SIMPSON
COURT FROM WHICH APPEALED: HARRISON COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: FRANK PHILIP WITTMANN IV
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: DEIRDRE MCCRORY
DISTRICT ATTORNEY: CONO A. CARANNA II

IRVING, J., FOR THE COURT

VOTES: KING, C.J., LEE AND MYERS, P.JJ., GRIFFIS, BARNES, ISHEE, ROBERTS, CARLTON AND MAXWELL, JJ., CONCUR.

FACTS

Hill served in the Air Force in Biloxi and lived with her husband Douglas and their nine month old son A.A. Hill brought A.A. to the hospital after the child was acting "lifeless" in his crib. A.A. was examined and found to have multiple bruises on his body. X-rays were taken and multiple fractures were seen on A.A.'s body. Two treating physicians testified that the injuries were intentionally inflicted upon the child. Air Force investigators interviewed Hill and she admitted to hitting and injuring the child. Hill lived on the Air Force base and that is where the child was injured. Hill objected to jurisdiction of the trial court claiming that this would be a federal offense and the state did not have jurisdiction. Hill was tried for child abuse and sentenced to twenty years.

ISSUES

In addition to jurisdiction, Hill argued the weight and sufficiency of the evidence.

HOLDING

First, the court examined jurisdiction. Hill claimed that the Air Force base was the exclusive jurisdiction of the federal government. The trial court held a hearing and determined that the housing area where Hill resided was not within the exclusive jurisdiction of the federal government. The housing area was added to the base some years after the base was established. The local and federal government exercised concurrent jurisdiction over the housing area. Air Force authorities testified that they wished for this matter to be heard in state court because Douglas was not in the military and they wanted both parents tried in the same jurisdiction. The court found that it did have jurisdiction of the housing area and the appellate court affirmed this holding.

Next, the court looked at the sufficiency of the evidence. Having reviewed the record, the court held that it is clear that a rational trier of fact could have found Hill guilty, beyond a reasonable doubt, of every element of felonious child abuse.

Finally, the court examined the weight of the evidence. Viewing the evidence in the light most favorable to the verdict, allowing it to stand does not "sanction an unconscionable injustice."

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO59005.pdf

NO. 2008-KA-01225-COA

TAMECA DRUMMER APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - POSSESSION OF MARIJUANA

SENTENCED AS A HABITUAL OFFENDER TO LIFE IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS WITHOUT ELIGIBILITY FOR PAROLE OR PROBATION

TRIAL JUDGE: HON. JAMES LAMAR ROBERTS, JR.
COURT FROM WHICH APPEALED: ALCORN COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: JUSTIN TAYLOR COOK
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: LADONNA C. HOLLAND
DISTRICT ATTORNEY: JOHN RICHARD YOUNG

LEE, P.J., FOR THE COURT

VOTES: KING, C.J., MYERS, P.J., IRVING, GRIFFIS, ISHEE, ROBERTS, CARLTON AND MAXWELL, JJ., CONCUR. BARNES, J., CONCURS IN PART AND IN THE RESULT.

FACTS

Drummer was driving a vehicle without a license plate attached to the vehicle. This was noticed by an officer following Drummer. Drummer was also observed bumping the centerline of the roadway. She was pulled over. After pulling her over, the officer noticed a temporary license plate lying on the back dashboard. A check revealed that Drummer was driving with a suspended license. She was arrested and consented to a search of her vehicle. A search revealed cocaine and marijuana in the vehicle. Drummer admitted that she had just "dated" a man for money who did not pay her and when he did not pay she took the marijuana from him and hid it under her dashboard. She was convicted of possession of marijuana and sentenced as an habitual offender to life in prison.

ISSUES

On appeal, Drummer argues that the court erred in overruling her motion to suppress and that her sentence amounted to cruel and unusual punishment.

HOLDING

Drummer argues that there was no probable cause to initiate her traffic stop and therefore, any evidence seized should have been suppressed. The court reviewed the report filed by the arresting officer and noted that it did state the reason for pulling Drummer over was because she was weaving. This is sufficient probable cause and the issue is without merit.

Next, Drummer argues that a life sentence for possession of marijuana is disproportionate to the crime. Drummer did not raise this issue with the trial court. Procedural bar notwithstanding, Drummer had previously been convicted of aggravated assault and manslaughter and had served more than one year for each of these crimes. As an habitual offender, Drummer was properly sentenced to life without parole.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO60124.pdf

NO. 2008-KA-00695-COA

DAVID JACKSON WILLIAMS APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - MURDER

SENTENCED TO LIFE IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS

TRIAL JUDGE: HON. ANDREW K. HOWORTH
COURT FROM WHICH APPEALED: LAFAYETTE COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: DAVID G. HILL
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: JOHN R. HENRY
DISTRICT ATTORNEY: BENJAMIN F. CREEKMORE

IRVING, J., FOR THE COURT

VOTES: LEE AND MYERS, P.JJ., BARNES, ISHEE AND CARLTON, JJ., CONCUR. KING, C.J., DISSENTS WITHOUT SEPARATE WRITTEN OPINION. ROBERTS, J., DISSENTS WITH SEPARATE WRITTEN OPINION JOINED BY GRIFFIS, J. MAXWELL, J., NOT PARTICIPATING.

FACTS

Williams and Demetria were in a dating relationship. When Demetria did not report for band practice and work one of her friends became concerned. She called Williams and asked about Demetria. Williams said that Demetria had gone to Jackson to visit her sick father. When the friend could not reach Demetria she again called Williams and asked for a phone number to reach her. Williams arranged a three-way call with the friend and Demetria. The friend noticed that Demetria was extremely emotional and crying during most of the conversation. Demetria was not visiting her father but was instead in Williams apartment the entire time. Sometime during that week, Demetria died as a result of a knife wound to her chest. The only persons in the apartment were Williams and Demetria. Williams claimed that he and Demetria had a suicide pact and that Demetria killed herself after ingesting large amounts of drugs and alcohol. Williams claimed that he could not complete his suicide. He said that he passed out and woke up to find Demetria dead. He said he did not know what to do at that point and stayed in his apartment watching television and playing video games, hoping to get the courage to kill himself. When he was unable to do so, he went to his parents home and told them what had happened. The parents called an attorney and they contacted authorities. Williams voluntarily went in for questioning. When Demetria's Episcopal priest heard of her death, he approached authorities and notified them that he had reason to believe that Demetria may have committed suicide. However, on the witness stand, the priest claimed that his communication with Demetria was privileged. The state also called Dr. Steven Hayne who testified that it was his opinion that the cause of death was homicide.

ISSUES

Williams appeals and asserts that the circuit court erred when it: (1) refused his request for an assisted-suicide instruction; (2) allowed a priest to claim the priest-penitent privilege regarding conversations that the priest had with the victim; (3) allowed Dr. Steven Hayne to testify as an expert in the field of forensic pathology; and (4) denied his motion to dismiss based on the allegation that he had been denied his right to a speedy trial. Additionally, Williams claims that he received ineffective assistance of counsel.

HOLDING

Williams claims that the court erred when it refused to issue his requested instruction on assisted suicide. Williams argues that he is entitled to this instruction as it is his theory of the case. The court denied the instruction holding that Williams was only entitled an instruction on his theory of the case if it was a lesser included offense and there was evidence to support it. The court held that the trial court was correct in denying the instruction because there was no evidence supporting it. The court held that Williams did not testify and therefore, there was no support in the evidence for his theory. Further, the court held that Williams appeared to have given a scripted statement to investigators and therefore, did not give a great deal of weight to the statement. The court held that the trial judge was incorrect when he stated that the instruction could only be given if it were a lesser included offense. However, the trial judge was correct in denying the instruction because it was not supported by the evidence.

Next, Williams claimed that the trial court erred when he was denied the ability to question Father Rencher who claimed the priest penitent privilege. Rencher contacted authorities after Demetria's death and told authorities that he thought she had committed suicide. However, on the stand, Rencher refused to answer questions concerning his conversations with Demetria claiming the privilege. Rencher's attorney, the "Vice Chancellor of the Episcopal Diocese of Mississippi" Wayne Drinkwater, was allowed to argue that Rencher did not waive the privilege when he made statements to authorities as the privilege belonged to Demetria and not Rencher. The court examined the areas of questioning that Williams was limited to and found that if error occurred it was harmless error. Further, Williams argues that he could not ask Rencher whether Demetria had considered suicide. When asked this question Rencher again claimed the privilege. Williams did not ask any follow up questions indicating that a conversation may have occurred outside the priest penitent relationship. Therefore, the court is without sufficient record to find error on the part of the trial judge as Williams did not make a record on this issue.

Next, Williams argues that the trial court erred when it allowed Dr. Hayne to testify as an expert. The court held that Hayne could testify as an expert in forensic pathology. Williams also argues that his expert refuted the procedures used by Hayne in conducting his autopsy. The court held that allowing Dr. Hayne's testimony did not affect the "fairness, integrity, or public reputation" of Williams's trial. From the record, it appears that Dr. Hayne and Dr. Copeland merely disagreed regarding methodology and conclusions. As the jury heard testimony from both doctors, there is no merit to any contention that Dr. Copeland's testimony invalidated Dr. Hayne's testimony.

Next, Williams argues that his Constitutional and statutory rights to a speedy trial were violated. Williams was tried 571 days from the date he waived arraignment. He alleged a violation of the "270-day rule" and did not specifically raise the Constitutional issue but his brief sounded in Constitutional arguments. The court held that Williams waived his Constitutional argument because he did not raise it before the trial court. Further, the court held that Williams waived his statutory argument because he did not raise it in a timely fashion and only did so five days before trial.

Finally, Williams argues that he received ineffective assistance of counsel. Williams raised several areas where he indicated that his attorney was ineffective. The court reviewed each of these instances and concluded that the issue was without merit. The conviction and sentence were affirmed.

ROBERTS, J., DISSENTING:

The dissent provides a lengthy, well-reasoned and detailed analysis of why a lesser included offense instruction should have been given in this case. The dissent argues that the Court of Appeals is ignoring clear precedent from the Supreme Court and that the majority errs when it finds no evidence to support Williams proffered instruction.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO60773.pdf

January 5, 2010

NO. 2008-KA-01689-COA

LATOYA DOMINIQUE ROBINSON APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - AGGRAVATED ASSAULT

SENTENCED TO FIFTEEN YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS, WITH FIVE YEARS TO SERVE, AND TEN YEARS OF POSTRELEASE SUPERVISION

TRIAL JUDGE: HON. FORREST A. JOHNSON, JR.
COURT FROM WHICH APPEALED: AMITE COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANT: ERIN ELIZABETH PRIDGEN, LESLIE S. LEE
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: LISA LYNN BLOUNT
DISTRICT ATTORNEY: RONNIE LEE HARPER

MAXWELL, J., FOR THE COURT

VOTES: KING, C.J., LEE, MYERS, GRIFFIS, BARNES, ISHEE, ROBERTS AND CARLTON, JJ., CONCUR. IRVING, J., CONCURS IN PART AND IN THE RESULT

FACTS

A group of women began fighting. Robinson and her group were walking along the road when Christy and her group pulled over in a vehicle. The fight soon began. Robinson attempted to join in the fight. Christy grabbed her arm an attempted to stop her. Robinson slashed Christy's face which required more than fifty stitches. Robinson then struck Kellie in the head with a gin bottle which required medical attention. Robinson was indicted for aggravated assault. She was convicted and sentenced to five years in custody.

ISSUE

On appeal Robinson argues that her counsel was ineffective because he did not request a self defense instruction.

HOLDING

The court has held that a decision not to request a jury instruction is held to be trial strategy. Because the sole issue on appeal involves inaction on the part of trial counsel and would require information outside the record, the issue is best heard on post-conviction motions. The conviction is affirmed without prejudice to pursue a PCR motion.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO59774.pdf

NO. 2008-KA-01874-COA

DAVID LYNCH APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - POSSESSION OF CONTRABAND IN JAIL

SENTENCED AS A HABITUAL OFFENDER TO FIFTEEN YEARS IN THE CUSTODY OF MISSISSIPPI DEPARTMENT OF CORRECTIONS WITHOUT THE POSSIBILITY OF PROBATION, PAROLE, EARNED RELEASE, EARNED TIME, GOOD TIME, TRUSTEE STATUS OR ANY TYPE OF REDUCTION OF SENTENCE AND TO PAY A FINE OF $500

TRIAL JUDGE: HON. LESTER F. WILLIAMSON, JR.
COURT FROM WHICH APPEALED: CLARKE COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANT: JUSTIN TAYLOR COOK, LESLIE S. LEE
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: W. GLENN WATTS

DISTRICT ATTORNEY: BILBO MITCHELL

MAXWELL, J., FOR THE COURT

FACTS: KING, C.J., LEE AND MYERS, P.JJ., IRVING, GRIFFIS, BARNES, ISHEE, ROBERTS AND CARLTON, JJ., CONCUR

FACTS

Lynch was an inmate charged with possession of a cell phone. Officers smelled something burning in Lynch's jail cell. He was ordered out of his cell so officers could search it. Lynch was order to strip down. Officers noticed that he was wearing four pairs of boxer shorts an thermal underwear. They noticed a bulge in the thermal underwear and found two cell phones. Lynch testified that he was in the shower as the search began and put on someone else's clothes. Lynch testified that he thought officers were fabricating evidence of the cell phones. Prosecutors then began to ask Lynch about statements made by Lynch's attorney in pre-trial statements. Lynch objected that this was improper questioning and requested a mistrial. The trial court allowed the questions and denied the mistrial. Lynch was convicted and sentenced as an habitual offender to fifteen years in custody.

ISSUE

Lynch argues that it was to deny his motion for a mistrial and allowing the state to question Lynch about statements made by his attorney.

HOLDING

The court held that it was in fact error for the trial court to allow prosecutors to question Lynch about statements made by his attorney. However, because of the overwhelming evidence of Lynch's guilt, the error was harmless. The crime turns on possession of contraband, not ownership. The error in allowing these questions did not affect the final outcome of this case. The conviction was therefore affirmed.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO59449.pdf

NO. 2008-KA-01269-COA

TERRY LEE MADDEN APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - TWO COUNTS OF MURDER

SENTENCED TO CONCURRENT LIFE TERMS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS

TRIAL JUDGE: HON. CHARLES E. WEBSTER
COURT FROM WHICH APPEALED: TUNICA COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANT: JOHNNIE E. WALLS, JR., DAVID LYDELL TISDELL
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: DEIRDRE MCCRORY
DISTRICT ATTORNEY: LAURENCE Y. MELLEN

CARLTON, J., FOR THE COURT

VOTES: KING, C.J., LEE, MYERS, GRIFFIS, BARNES, ISHEE, ROBERTS AND MAXWELL, JJ., CONCUR. IRVING, J., CONCURS IN PART AND IN THE RESULT

FACTS

Officer Harris noticed an eighteen wheeler and a Chevy Malibu parked across from her home. They appeared to be out of place and had their windows broken. Laura Willis was found in her vehicle with a wound to her neck. Andy McCorkle's body was found in the eighteen wheeler also with a gunshot wound. Laura and Terry Lee Madden had been in a romantic relationship for sixteen years and had recently broken up. Andy and Laura had been involved in an affair for five years which had caused his divorce, however, he had gotten back together with his wife, Gwen. Gwen was ruled out as a suspect in the murders. Madden was charged with both murders and was convicted. He was sentenced to concurrent life sentences.

ISSUES

On appeal, Madden raises the following assignments of error: (1) the verdicts are against the overwhelming weight of the evidence; (2) the evidence was legally insufficient to support the guilty verdicts; (3) the State failed to meet its burden of proof in this case based on circumstantial evidence; (4) evidence of Madden's prior bad acts was improperly admitted into evidence; and (5) cumulative error requires reversal.

HOLDING

The court consolidated the first three assignments of error into one issue. In examining the weight and sufficiency of the evidence, the court reviewed all of the evidence and noted that this is a circumstantial evidence case. Prosecutors presented evidence that the murder weapon was a 40 caliber. Although Madden denied owning a 40 caliber weapon, witnesses testified that Madden bought a 40 caliber several years before the murders and even had that weapon confiscated by police in an unrelated incident some time before the murders. The weapon was returned to Madden by police officers. Witnesses also testified that they had overheard Madden threaten to kill Laura and that they had a violent relationship. Madden presented four alibi witnesses who stated that he was seen sixty miles away from the murder scene the morning of the murder. However, the witnesses did not actually see Madden and/or placed him away from the scene some time after the murders. In reviewing all of the evidence in a light favorable to the prosecution, allowing the verdict to stand does not sanction an unconscionable injustice.

Next, Madden argues that the court erred in allowing witnesses to testify about his prior bad acts. The admission or exclusion of evidence is reviewed on an abuse of discretion standard. Madden objected to the admission of this evidence. The trial court found the evidence to be relevant, however, Madden argued that the evidence was more prejudicial than probative. The court looked at the evidence under Rule 403 and Rule 404(b) and found that the evidence was admissible relevant for impeachment purposes and to show motive, intent, knowledge, and preparation. Therefore, this issue is without merit.

Finally, Madden argues cumulative error. Having found no error, harmless or otherwise, there could be no cumulative error. The conviction was affirmed.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO59768.pdf

NO. 2008-KA-01551-COA

KARRIE LINNETTE GLENN APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - MURDER

SENTENCED TO LIFE IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS

TRIAL JUDGE: HON. ROBERT P. KREBS
COURT FROM WHICH APPEALED: JACKSON COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: GEORGE S. SHADDOCK
ATTORNEYS FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: LAURA HOGAN TEDDER, STEPHANIE BRELAND WOOD
DISTRICT ATTORNEY: ANTHONY N. LAWRENCE III

ROBERTS, J., FOR THE COURT

VOTES: KING, C.J., LEE, P.J., IRVING, GRIFFIS, BARNES, CARLTON AND MAXWELL, JJ., CONCUR. MYERS, P.J., AND ISHEE, J., NOT PARTICIPATING

FACTS

In 1998, Tony and Karrie appeared to have a good marriage. Tony was a truck driver and Karrie was a home health care nurse. They had two young children. One morning, Karrie was at work when she received a phone call form her neighbor saying something was wrong with Tony. Tony had been shot twice with a shotgun and was dead. Investigators learned that Karrie had a business other than home health care. She also sold marijuana. Stokes assisted Karrie in the marijuana business. About a month before Tony's murder, Karrie bought ten pounds of marijuana

from Wayne. Karrie claimed that Wayne shorted her on about fourteen ounces of marijuana and refused to pay her for this amount. Karrie claimed that Wayne was angry and may have killed Tony. Wayne was later arrested but had an alibi during the time of the murder. Wayne told investigators that he thought that Karrie and Stokes were in a sexual relationship. Investigators searched Stokes home and found clothing and three unfired shotgun shells. Stokes was supposed to be a pall bearer at Tony's funeral but became emotional and could not fulfill his duties. Three days later he packed and left for South Carolina.

The case went cold until 2007 when an inmate approached authorities with information about Tony's death. The inmate claimed that shortly after Tony's death, Stokes approached him wanting to sell a shotgun. Authorities traveled to South Carolina to interview Stokes. He confessed to the murder of Tony but said that he did so at Karrie's request. He admitted to a romantic relationship with Karrie and said he killed Tony because Karrie said that Tony hit her and that he loved Karrie. Stokes agreed to testify against Karrie in exchange for a manslaughter plea. Stokes and others testified to the above events. Karrie testified in her own defense. Karrie was convicted of murder and sentenced to life in custody.

ISSUES

Karrie claims that the court erred in denying one of her proposed jury instructions. She also argued weight and sufficiency of the evidence and cumulative error.

HOLDING

First, Karrie claims that it was error to deny one of her proposed jury instructions. The instruction proffered was a reasonable doubt instruction. The court denied it the instruction saying that it was encompassed in other instructions. Further, Karrie did not object to the denial of the instruction. However, the court held that one who proffers an instruction need not object when the instruction is denied. The court held that it is not proper to define reasonable doubt. There was direct evidence and testimony of Karrie's guilt and this was not a circumstantial evidence case. It was not error to deny the instruction.

Next, the court examined the weight and sufficiency of the evidence. The court reviewed all of the evidence and testimony and found it to be sufficient to sustain the jury's verdict. Viewing the evidence in the light most favorable to the conviction, there is no error in the decision to deny the motion for a new trial.

Finally, Karrie claims cumulative error. Having found no other error, the court could not find cumulative error. The conviction was affirmed.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO60434.pdf

NO. 2008-KA-01755-COA

CALVIN BASKIN APPELLANT

v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL-FELONY - SALE OF COCAINE

SENTENCED TO TWENTY YEARS, WITH FIVE YEARS SUSPENDED AND FIFTEEN YEARS TO SERVE, IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS

TRIAL JUDGE: HON. HENRY L. LACKEY
COURT FROM WHICH APPEALED: CHICKASAW COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: ROBERT SNEED LAHER
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: LADONNA C. HOLLAND
DISTRICT ATTORNEY: BENJAMIN F. CREEKMORE

ROBERTS, J., FOR THE COURT

VOTES: KING, C.J., LEE AND MYERS, P.JJ., IRVING, GRIFFIS, BARNES, ISHEE, CARLTON AND MAXWELL, JJ., CONCUR

FACTS

Pickens worked as a confidential informant. He attempted to buy drugs from Korbin but Korbin did not have any. Korbin called Baskin and accompanied Pickens to purchase the drugs from Baskin. Audio and video surveillance showed Pickens pick up a package of drugs off the counter and hand Baskin $100 in cash. Baskin then handed Pickens $50 in change. Baskin was indicted and tried. He testified in his own defense and said that he did not sell drugs but was set up by Korbin who actually sold the drugs. Korbin was also indicted but fled prior to trial. Baskin was convicted and sentenced to twenty five years with fifteen years suspended.

ISSUES

Baskin argues that the trial court erred in not suppressing the video and in denying the motion for a JNOV.

HOLDING

The court reviews the admission or exclusion of evidence on an abuse of discretion standard. Baskin moved to exclude the video because Korbin was not available to be cross-examined. However, no statements on the tape were used against Baskin. Baskin complains that Korbin was the target of the investigation and was a known dealer. However, the state is not required to produce witnesses for the defense. Pickens testified and Baskins cross-examined him. There was no error in denying the motion to suppress.

Finally, the court examined the weight and sufficiency of the evidence. In reviewing all of the evidence, the court found that all elements of the crime were proven. The evidence was in fact sufficient. In reviewing the evidence in a light most favorable to the conviction, the court did not err in denying the motion for a new trial. The conviction was affirmed.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO60267.pdf

NO. 2008-KA-01865-COA

ANDRETTI CAMPER A/K/A DRE APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - AGGRAVATED ASSAULT

SENTENCED TO EIGHT YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS

TRIAL JUDGE: HON. ROBERT G. EVANS
COURT FROM WHICH APPEALED: SIMPSON COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANT: HUNTER NOLAN AIKENS, LESLIE S. LEE
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: DEIRDRE MCCRORY
DISTRICT ATTORNEY: EDDIE H. BOWEN

ROBERTS, J., FOR THE COURT

VOTES: KING, C.J., LEE AND MYERS, P.JJ., IRVING, GRIFFIS, BARNES, ISHEE, CARLTON AND MAXWELL, JJ., CONCUR

FACTS

Camper was a passenger in a vehicle driven by Rose. The vehicle was stopped by Edwards who wanted to confront Camper, as Edwards believed Camper was spreading rumors that he was a snitch. Camper and Edwards argued and Edwards slapped Camper. Edwards was then shot in the stomach and Camper and Rose drove away. Camper testified that Edwards had the gun in his waistband and it fired as he and Edwards struggled over the weapon. Camper was indicted for aggravated assault. He was convicted and sentenced to eight years in custody.

ISSUES

Camper argues that the trial court erred in allowing the state to use its peremptory strikes against African Americans and that the verdict was against the weight of the evidence.

HOLDING

First, the court examined the race neutral reasons offered for the striking of African Americans from the jury. The reason offered by the state for striking the first juror was that he looked disinterested and that he lived in a known drug area. The second juror was stricken for bad body language. The state offered that the third juror was stricken because she looked sleepy. Further, Camper did not proffer the ultimate racial makeup of the jury. Based upon a review of what was in the record, the court held that the reasons offered by the state were in fact race neutral and it was not error to allow the strikes.

Finally, the court looked at the weight of the evidence. In reviewing the evidence, the court found that all elements of the crime of aggravated assault were proven. Viewed in a light favorable to the verdict, the verdict is not against the weight of the evidence. The conviction and sentence was affirmed.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO60268.pdf

NO. 2008-KA-01918-COA

VERENZO GREEN APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - CONSPIRACY TO INTRODUCE A CONTROLLED SUBSTANCE INTO A JAIL

SENTENCED TO FIVE YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS

TRIAL JUDGE: HON. FORREST A. JOHNSON, JR.
COURT FROM WHICH APPEALED: ADAMS COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: BENJAMIN ALLEN SUBER
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: LISA LYNN BLOUNT
DISTRICT ATTORNEY: RONNIE LEE HARPER

GRIFFIS, J., FOR THE COURT

VOTES: KING, C.J., LEE AND MYERS, P.JJ., IRVING, BARNES, ISHEE, ROBERTS, CARLTON AND MAXWELL, JJ., CONCUR

FACTS

Green was an inmate in the Natchez City Jail. He was romantically involved with Emfinger. Green called and asked Emfinger to purchase marijuana for him and put it in a soap box and bring it to the jail and give it to the female jailer. Emfinger did so but gave it instead to the male jailer who found it suspicious. The jailer found the contraband. Upon questioning Emfinger implicated Green. Green was indicted and convicted of conspiracy to commit a crime.

ISSUE

On appeal, Green argues the conviction is against the weight of the evidence.

HOLDING

The court reviewed the testimony and evidence in this case and found that allowing it to stand would not sanction an unconscionable injustice. Green argues that the only evidence of his conspiracy was the unreliable testimony of Emfinger. However, the court also reviewed letters written by Green which indicated that he requested the contraband and was attempting to fabricate a story with Emfinger. The issue is without merit.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO59933.pdf

NO. 2008-KA-01469-COA

KEVIN EUGENE OWEN APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - ARMED ROBBERY

SENTENCED TO TWENTY-FIVE YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS

TRIAL JUDGE: HON. ROBERT B. HELFRICH
COURT FROM WHICH APPEALED: FORREST COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: ERIN ELIZABETH PRIDGEN
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: JEFFREY A. KLINGFUSS
DISTRICT ATTORNEY: JON MARK WEATHERS

IRVING, J., FOR THE COURT

VOTES: KING, C.J., LEE AND MYERS, P.JJ., GRIFFIS, BARNES, ISHEE, ROBERTS, CARLTON AND MAXWELL, JJ., CONCUR

FACTS

A Circle K convenience store in Hattiesburg was robbed. The clerk immediately called 911 and reported the robbery. He described the robber as a white male with blue shorts and white sneakers with red soles. Owen was seen by police near the store. He matched the description except that he had light colored shorts. However, his shorts were found to be reversible and the inside was blue colored. Owen claimed that he was staying in a nearby motel and was merely walking by. The store clerk identified Owen as the robber. When Owen was booked into jail he did not have a large tattoo on his left arm but did at the time of trial. Owen was convicted of armed robbery and sentenced to twenty five years.

ISSUES

On appeal, Owen argues that the court erred in denying his motion to suppress the show up identification and in violating his right to confront a witness against him.

HOLDING

First, the court examines the motion to suppress. The court noted that suggestive confrontations are disapproved because they can lead to misidentification. However, the admission of a show up identification without more does not violate due process. The court noted that the clerk had time to view the robber and also watched the video tape prior to making the identification. His testimony at the suppression hearing was consistent with his trial testimony. Therefore, there is no merit to this issue.

Finally, the court addresses the issue of confronting a witness. The state played an audio tape of an inmate who talked of Owen's tattoo. Owen objected that this was an unsworn statement and he was not able to cross-examine the witness. The state declared that the inmate was unavailable pursuant to Rule 404(b). The admission of evidence will only be reversed for abuse of discretion. The inmate was called to the stand and began complaining of heart pains. A nurse was called and the inmate said he could not testify. The nurse testified that the inmate had a heart condition and suffered from serious problems. The court declared the witness to be unavailable and allowed the admission of his unsworn statement. Owen objected. The appellate court held that it was error for the trial judge to allow the admission of the statement. The court found that the admission of this evidence did not aid in the conviction. There was other testimony which was the same as the recorded statement. Therefore, its admission was harmless. The conviction and sentence was affirmed.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO60439.pdf

January 12, 2010

NO. 2009-KA-00333-COA

DARRELL MCBRIDE APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - MURDER

SENTENCED TO LIFE IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS, WITH THE SENTENCE TO RUN CONSECUTIVELY TO ANY OTHER SENTENCE BEING SERVED

TRIAL JUDGE: HON. C. E. MORGAN III
COURT FROM WHICH APPEALED: ATTALA COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: W. DANIEL HINCHCLIFF
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: CHARLES W. MARIS JR.
DISTRICT ATTORNEY: DOUG EVANS

IRVING, J., FOR THE COURT

VOTES: KING, C.J., LEE AND MYERS, P.JJ., GRIFFIS, BARNES, ISHEE, ROBERTS, CARLTON AND MAXWELL, JJ., CONCUR

FACTS

McBride was indicted and convicted of murder. He was sentenced to life in custody. His appellate counsel filed a *Lindsey* brief asserting that there are no arguable issues for appeal. McBride did not file a supplemental pro se brief. The evidence at trial showed that McBride's blood was found at the murder scene. The blood was confirmed to be McBride's through DNA testing. McBride was also treated on the day of the murder for a severe cut to his pinkie finger. He took the stand in his own defense and testified that he was at the scene of the crime but had attempted to stop the murder.

ISSUE

The court followed the procedures set forth in *Lindsey* when appellate counsel certifies that there are no arguable issues for appeal.

HOLDING

The court reviewed the record and determined that there were no issues which merited reversal. The conviction and sentence was affirmed.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO60570.pdf

January 19, 2010

NO. 2008-KA-00844-COA

HARVEY WILLIAMS, JR. A/K/A SMOKIE APPELLANT

v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - MURDER

SENTENCED TO LIFE IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS

TRIAL JUDGE: HON. L. BRELAND HILBURN
COURT FROM WHICH APPEALED: HINDS COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: JANE E. TUCKER
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: LADONNA C. HOLLAND
DISTRICT ATTORNEY: FAYE PETERSON

IRVING, J., FOR THE COURT

VOTES: KING, C.J., LEE AND MYERS, P.JJ., GRIFFIS, ISHEE, ROBERTS AND MAXWELL, JJ., CONCUR. CARLTON, J., DISSENTS WITH SEPARATE WRITTEN OPINION, JOINED BY BARNES, J.

FACTS

Williams shot and killed Calvin Younger outside of Jay's Lounge in Jackson, Mississippi, during the early morning hours of June 22, 2003. Donte Hill, a passenger in Williams's car, was later apprehended by the police. After being taken in for questioning, Hill provided an audiotaped statement wherein he implicated Williams in Younger's murder. Thereafter, on December 9, 2003, Williams was indicted and charged with Younger's murder. He went to trial on April 3-6, 2007. His defense was that he shot Younger in self-defense. Numerous witnesses testified; however, since Williams does not challenge the sufficiency of the evidence against him, the court dispensed with a recitation of all of the facts surrounding the crime.

ISSUES

Aggrieved, Williams appeals and asserts (1) that the trial court erred in refusing to allow testimony because of a discovery violation, (2) that the State committed prosecutorial misconduct, (3) that the trial court erred in refusing to grant the defense's motion for a continuance, (4) that he received ineffective assistance of counsel, (5) that the trial court erred in holding that the State would be permitted to impeach a witness he sought to call, (6) that the trial court erred in refusing to allow the defense to cross-examine a witness for the State regarding a prior inconsistent statement, (7) that the court erred in granting a flight instruction, and (8) that the cumulative effect of the errors committed at trial warrants a new trial.

HOLDING

First, the court addressed the discovery violation. The defense disclosed the existence of the witness (Anthony Herrington) five days before trial. The defense also provided a summary of what the witness was expected to testify to. The court allowed the witness to testify but refused to allow the witness to go beyond the summary that was provided. The court held that if the trial judge did err in limiting the witness, this was harmless error because of other overwhelming evidence of Williams guilt.

Next, Williams argues that the trial court improperly restricted him from putting on evidence of the violent character of the victim. The court granted motions to exclude the testimony of the victim's girlfriend and his sister regarding his propensity for violence. Williams argued that these rulings prohibited him from putting on his theory of the case. The court found that Williams attempted to introduce this evidence during the state's case and it was premature at that time. The testimony would have been allowed during the defendant's case-in-chief but Williams failed to re-call these witnesses. Therefore, there was no error.

Next, the court addressed Williams allegations of prosecutorial misconduct. Williams argues that the prosecutors erred by stating that Williams was the only person to testify that the victim had a gun. Williams claims that prosecutors knew that another witness also put a gun in the victims hand earlier in the day. However, when this statement was made to the jury, Williams objected. The objection was sustained. The court held that "when a trial court sustains an objection, it cures any error." Further, Williams claims misconduct in the asking of irrelevant inquires and inflammatory statements. The court agreed that one of the prosecutors was overzealous in her representation but found her conduct to be harmless. Lastly, Williams complains of prosecutor's mischaracterization of Dr. Hayne's testimony. However, the court examined the record and found that the state did not mischaracterize the evidence.

Next, Williams complains that the court erred in not granting a continuance. On the first day of trial, Williams attorney asked for a continuance to locate two witnesses. The attorney offered no reason why the witnesses could not have been located for more than a year while the attorney was handling the case and therefore, it was not an abuse of discretion to deny the motion.

Next, Williams argues ineffective assistance of counsel for having witnesses excluded for having violated discovery rules. However, Williams points to no witness that was actually excluded and so there is no error for the court to review.

Next, Williams argues that the court erred in allowing the state to impeach one of Williams statements with a videotape. The video was of the witness "role playing" with the defendant. The video was produced for a "Pimp and Ho" ball. In the video Williams bragged that the witness would do whatever he told her to do. The court held that the trial judge did not err in allowing the state to use this portion of the video.

Next, Williams complained that the court erred when it refused to allow him to cross-examine a witness about a prior audio recording. Williams did not produce the recording to the state and a motion was filed to exclude the taped statement. The court reviewed the statement and found that it was properly excluded as hearsay and did not fall within any exception.

Next, Williams argues that the court erred when it granted a flight instruction. Williams testified that he left the scene because he felt like he was in danger. However, Williams attempted to flee when police found him. Therefore, the court held that these actions were inconsistent with Williams statements because if he were truly in fear then he should have known that the police would protect him. This issue is also without merit.

CARLTON, J., DISSENTING

The dissent would found that the trial judge erred in excluding the testimony of Anthony Herrington (the witness the defense gave 5 days notice off), and would therefore reverse and remand this case for a new trial because exclusion of evidence constitutes an extreme remedy under the Uniform Rule of Circuit and County Court 9.04(I)(3).

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO60003.pdf

January 26, 2010

NO. 2008-KA-00696-COA

RICHARD RAY TIMMONS APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - CONVICTED OF STATUTORY RAPE

SENTENCED TO TWENTY YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS WITH TEN YEARS SUSPENDED AND FIVE YEARS OF POST-RELEASE SUPERVISION AND TO PAY A $2,000 FINE AND $1,000 TO THE CHILDREN'S TRUST FUND

TRIAL JUDGE: HON. LESTER F. WILLIAMSON, JR.
COURT FROM WHICH APPEALED: LAUDERDALE COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANT: HUNTER NOLAN AIKENS, LESLIE S. LEE
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: JOHN R. HENRY, JR.
DISTRICT ATTORNEY: BILBO MITCHELL

MAXWELL, J., FOR THE COURT

VOTES: LEE AND MYERS, P.JJ., IRVING, GRIFFIS, BARNES, ISHEE, ROBERTS AND CARLTON, JJ., CONCUR. KING, C.J., CONCURS IN RESULT ONLY.

FACTS

Timmons was employed by the Lewis' to help with the family business. Timmons was allowed to sleep on a couch in the Lewis's living room. The Lewis's two young daughters also slept in the living room when the air conditioner was not working. The Lewis' became suspicious of a relationship between Timmons and their fourteen year old daughter, Christy. Christy ultimately admitted to a sexual relationship with Timmons. The Lewis' then kicked Timmons out of the home. After that, Timmons called the Lewis' and admitted to the sexual relationship. Timmons was indicted on four counts of statutory rape but was only convicted of one count. He was sentenced to twenty years with ten suspended. Timmons now files this appeal.

ISSUES

On appeal Timmons claims: (1) the circuit court erred in limiting the scope of Timmons's cross-examination of the victim, and (2) the verdict is against the overwhelming weight of the evidence.

HOLDING

Timmons first argues that it was error to limit his cross-examination of Christy. He wanted to question her about statements that she made to investigators that she believed that Timmons was involved with other girls. The state objected on relevance. Timmons argued that these "false allegations" were relevant. The court examined the ruling and found that Christy's information was speculative. This was within the discretion of the trial court.

Further, Timmons argues that the decision to limit cross-examination was a violation of the confrontation clause. Timmons made no Sixth Amendment arguments at trial. However, the court can look at this issue under plain error. The court held that even error involving constitutional rights can be harmless errors. In reviewing the record, the court noted that Timmons was allowed a lengthy cross-examination of Christy on this issue, thus the issue was before the jury. Any potential error was does not rise to the level of manifest injustice.

Finally, the court examined the weight of the evidence. The court reviewed all of the evidence in a light most favorable to the state and found that the verdict was not contrary to the overwhelming weight of the evidence. The conviction and sentence was affirmed.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO60157.pdf

February 9, 2010

NO. 2008-KA-01349-COA

THURMAN KIRKWOOD A/K/A MICKEY APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - CONVICTED OF COUNT I, BURGLARY OF A DWELLING HOUSE, COUNT II, FELONY FLEEING; COUNT III, POSSESSION OF A FIREARM BY A CONVICTED FELON; COUNT IV, GRAND LARCENY

SENTENCED TO TWENTY-FIVE YEARS ON COUNT I, FIVE YEARS ON COUNT II; TEN YEARS ON COUNT III; TEN YEARS ON COUNT IV, AS A HABITUAL OFFENDER, WITH THE SENTENCES TO RUN CONCURRENTLY IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS

TRIAL JUDGE: HON. CHARLES E. WEBSTER
COURT FROM WHICH APPEALED: COAHOMA COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT: JUSTIN TAYLOR COOK
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: W. GLENN WATTS
DISTRICT ATTORNEY: LAURENCE Y. MELLEN

BARNES, J., FOR THE COURT

VOTES: KING, C.J., LEE AND MYERS, P.JJ., IRVING, GRIFFIS, ISHEE, ROBERTS AND CARLTON, JJ., CONCUR. MAXWELL, J., CONCURS IN PART AND IN THE RESULT

FACTS

A Coahoma County jury found Thurman Kirkwood guilty of burglary of a dwelling, fleeing or eluding a law enforcement officer in a motor vehicle, possession of a firearm by a convicted felon, and grand larceny. The circuit court determined that Kirkwood was a habitual offender and sentenced him to twenty-five years for burglary, five years for fleeing a law enforcement officer, ten years for possession of a firearm by a convicted felon, and ten years for grand larceny, all in the custody of the Mississippi Department of Corrections (MDOC). All of the sentences were ordered to run concurrently without the possibility of parole or probation.

Smith testified that Kirkwood approached him on the morning of October 11, 2007 as Smith was leaving for Memphis. Kirkwood was driving a blue and grey van. Kirkwood called Smith during the day and asked if Smith was still in Memphis. When Smith returned he noticed that his home had been burglarized. Missing were some rifles and radios and other items. Smith's nephew testified that he saw a blue and grey van near Smith's home while Smith was in Memphis. Also, on October 11, Banks noticed that his blue and grey van was stolen from his home. He reported the theft to Clarksdale police. Later that day, an officer spotted the van as it was being driven around Clarksdale. Police pursued the vehicle which fled at high rates of speed. Officer Poer testified that he spotted Kirkwood driving the van and ultimately pulling over and fleeing on foot. Poer chased and caught Kirkwood running away from the scene. Inside the van were rifles and radios and other items belonging to Smith.

At trial, Kirkwood testified in his own defense. He admitted to being a drug addict but claimed that friends of his showed up in the van and went into Smith's home and stole the items.

Kirkwood also admitted that he had committed "lots of crimes" prior to this incident. During trial, prosecutors revealed that their witness, Smith, had been arrested for the sale of drugs.

ISSUES

Kirkwood raised eight issues on appeal which were consolidated into four areas of discussion. The issues are admission of the felony convictions, weight and sufficiency of the grand larceny charges, jury instructions, and cumulative error.

HOLDING

First, Kirkwood argues that the court erred in admitting his prior felony convictions. Kirkwood complains that the court erred in allowing testimony about a prior burglary of a dwelling conviction. Kirkwood offered to stipulate to the conviction. The state asked that the documents be admitted nonetheless. The court allowed the admission of the records. The court held that pursuant to prior federal and state decisions, it was error to admit these documents over the stipulation of Kirkwood. However, the court held that any error was harmless because of the overwhelming evidence of guilt.

Additionally, Kirkwood complained that it was error to require him to testify about prior convictions without conducting a balancing test. Further, the trial court said that Kirkwood "opened the door" to questioning because he admitted to other crimes. The court agreed with Kirkwood that it was error to allow this line of questioning, however, the court again found this to be harmless error in light of the overwhelming evidence of guilt.

Next, Kirkwood argues that the evidence was insufficient to establish grand larceny as the value of the van was never proven to be more than $500. Banks testified that he purchased the van several years ago for $8000. However, the present value of the van was never stated. The court held that the jury could infer from testimony that the van was being driven, and from photographs, that the van was worth in excess of $500. Allowing the verdict to stand therefore does not sanction an unconscionable injustice.

Next, Kirkwood complains of the jury instructions. Specifically, Kirkwood complains that he should have been granted a circumstantial evidence instruction on the burglary and grand larceny charges. The court held that there was in fact direct evidence of these offenses and therefore, a circumstantial evidence instruction was not proper. Further, Kirkwood argues that he was entitled to a peremptory instruction on burglary of a dwelling because Smith did not live in the burglarized residence. The court held that Smith stayed in the trailer occasionally and that was enough to establish that it was a "dwelling house."

Finally, Kirkwood argues cumulative error. The court held that because of the overwhelming evidence of guilt in this case, the errors that did occur were harmless and did not deprive Kirkwood of a fair trial.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO61462.pdf

NO. 2008-KA-01648-COA

TOBY LEE HENRY APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - CONVICTED OF FELONY CHILD ABUSE

SENTENCED TO TWENTY YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS WITH FIVE YEARS OF POST-RELEASE SUPERVISION

TRIAL JUDGE: HON. LEE J. HOWARD
COURT FROM WHICH APPEALED: LOWNDES COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: WILLIAM PAUL STARKS II
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: W. GLENN WATTS
DISTRICT ATTORNEY: FORREST ALLGOOD

GRIFFIS, J., FOR THE COURT
VOTES: KING, C.J., LEE AND MYERS, P.JJ., IRVING, BARNES, ISHEE, ROBERTS, CARLTON AND MAXWELL, JJ., CONCUR

FACTS

Henry was indicted for felony child abuse of his girlfriend's child. The child's great grandmother visited the child and noticed a lump on his head and bruising and bite marks on the child. She took the child to a hospital. Dr McCoy testified that the bruising and bites were not typical injuries to a child. Henry gave a statement to authorities admitting that he hit and bit the child. Henry was convicted and sentenced to twenty years.

ISSUES

Henry argues that (1) he was denied his constitutional right to counsel; (2) he was denied effective assistance of counsel; and (3) the current interpretation of the felony child-abuse statute violates his right to due process.

HOLDING

Henry claims that he was denied his constitutional right to counsel because his attorney took inactive status before his trial. Henry's attorney, Sams, took inactive status on August 1. Henry's trial was August 28. The court agreed that Sams was inactive and thus not authorized to practice law at the time of the trial. However, the court found this to be harmless error because Henry failed to show any prejudice as a result of the status.

Next, henry claims that he was denied effective assistance of counsel because his lawyer was an inactive member of the bar. The court held that Henry must show that his counsel's performance was deficient, and that this deficiency prejudiced his defense. Incredibly, the court reviewed this issue as though Sams were an active member of the bar. The court reviewed all of the aspects of the trial raised by Henry and found that from the record it could not ineffective assistance of counsel of constitutional proportions. However, the court noted that Henry could present these claims in a PCR motion.

Finally, the court examined whether the current interpretation of the felony child abuse statute violates Henry's right to due process. Specifically, Henry complains that the phrase "serious bodily harm" is overly broad. He claims that bruising of the skin should not constitute serious harm. The court reviewed all of the applicable precedent and held that it lacked authority to overrule the prior case law. Therefore, Henry's conviction and sentence was affirmed.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO60864.pdf

NO. 2004-KA-00642-COA

THORNTON PETERSON, JR. A/K/A THORNTON PETERSON APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - POSSESSION OF COCAINE WITH INTENT

SENTENCED AS A SUBSEQUENT AND A HABITUAL OFFENDER TO SIXTY YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS WITHOUT ELIGIBILITY FOR PROBATION OR PAROLE

TRIAL JUDGE: HON. W. ASHLEY HINES
COURT FROM WHICH APPEALED: SUNFLOWER COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: STEPHEN NICK
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: LISA LYNN BLOUNT
DISTRICT ATTORNEY: WILLIE DEWAYNE RICHARDSON

GRIFFIS, J., FOR THE COURT

VOTES: KING, C.J., LEE AND MYERS, P. JJ., BARNES, ISHEE, ROBERTS AND MAXWELL, JJ., CONCUR. IRVING, J., CONCURS IN PART AND IN THE RESULT. CARLTON, J., NOT PARTICIPATING

FACTS

Peterson was indicted for possession of cocaine with intent to distribute. He was convicted and sentenced as an habitual offender to sixty years in custody. Peterson was arrested after police executed a search warrant at a home where Peterson was found. A room in the home was padlocked from the outside. Police removed the lock and found cocaine in the room. Peterson attempted to flee the scene. He was apprehended and keys were found in his pocket. One of the keys opened the padlock on the door. Webb testified that she lived in the home with the permission of Peterson. Peterson did not live there but sold drugs from the house. Webb testified that Peterson did not allow anyone to enter the locked room and if they attempted to do so Peterson would evict them from the home. The people who lived in the home were all addicted to cocaine and assisted Peterson in his drug selling business.

ISSUES

Peterson argues that: (1) the circuit court erred by denying his motion for a directed verdict at the close of the State's evidence; (2) the circuit court failed to admit the parties' stipulation in violation of Rule 901 of the Mississippi Rules of Evidence; (3) jury instructions D-4 and D-6 were improperly refused; (4) the circuit court failed to properly instruct the jury on the meaning of the terms and/or elements of the crime charged in the indictment; (5) the search warrant was invalid; (6) his motion to suppress was improperly denied; and (7) the circuit court improperly sentenced him as a habitual offender.

HOLDING

First, Peterson argues sufficiency of the evidence. Viewing the evidence in the light most favorable to the state, the court held that the trial judge did not err in denying the motion for a directed verdict.

Next, Peterson argues that it was error not to admit into evidence the stipulation that the substance in question was cocaine. He complains that the stipulation was merely read to the jury and marked for identification. The court held that the reading of the stipulation effectively places the stipulation into evidence. Peterson's counsel agreed to the stipulation and did not object, therefore, this issue is without merit.

Next, Peterson argues that the trial court erred in not granting a jury instruction on presumption of innocence. The court found this instruction to be covered in other instructions. Further, Peterson claims that he was entitled to an instruction concerning other bad acts along with a limiting instruction. The court found that Peterson did not request a limiting instruction so this issue was without merit. The instruction requested by Peterson was a misstatement of the law and was properly denied.

Next, Peterson claims that the jury was not properly instructed on the elements of the offense. The court found that Peterson did not object to the complained of instruction at trial. Further, the court examined the instruction and found it to be a proper statement of the law.

Next, Peterson argued that the search warrant was not valid. The court found that the warrant and the evidence resulting from the warrant were both admitted at trial. Peterson did not object. Therefore, this issue is without merit.

Next, Peterson argues that his motion to suppress should have been granted. A suppression hearing was held in this case. The trial judge heard testimony and received evidence. She found sufficient evidence to constitute probable cause for the warrant. She did not abuse her discretion in doing so. This issue was therefore without merit.

Finally, Peterson complains that he was improperly sentenced as an habitual offender because the state was allowed to amend the habitual offender portion of the indictment just prior to sentencing. However, the court found that the amendment merely affected a single sentencing date. Peterson was on notice that the state planned to use his prior convictions to enhance his sentence. This issue was also without merit and the conviction and sentence was affirmed.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO60397.pdf

February 16, 2010

NO. 2008-KA-01573-COA

LEANDER SMITH A/K/A LEE ANDREW SMITH A/K/A TIGER APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - CONVICTED OF BURGLARY OF A BUSINESS

SENTENCED AS A HABITUAL OFFENDER TO SEVEN YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS

TRIAL JUDGE: HON. KENNETH L. THOMAS
COURT FROM WHICH APPEALED: QUITMAN COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANT: GEORGE T. HOLMES, LESLIE S. LEE, WILBERT LEVON JOHNSON
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: JEFFREY A. KLINGFUSS
DISTRICT ATTORNEY: LAURENCE Y. MELLEN

CARLTON, J., FOR THE COURT

VOTES: KING, C.J., LEE AND MYERS, P.JJ., IRVING, GRIFFIS, BARNES, ISHEE, ROBERTS AND MAXWELL, JJ., CONCUR

FACTS

Smith was convicted of business burglary. On January 28, 2008, the family dollar store in Marks was burglarized. Neighbors heard loud noises coming from the store and called police. At the same time a silent alarm alerted police to a broken window in the same store. Police arrived a short time later and caught Smith fleeing the scene. He had two black skull caps in his pocket and broken glass on his clothing. Smith testified that he bought the caps from the store earlier. A store clerk testified that she did not sell any caps to Smith. Prosecutors advised the court that a video was available of the burglary, but because the tape could not be copied the state would not refer to it in the trial. On cross-examination of the clerk, the defense asked how she could be sure that Smith burglarized the store. The clerk stated that she had seen the video of Smith breaking into the store. The defense asked for a mistrial which was denied. Smith was found guilty and sentenced to seven years.

ISSUES

Smith argued that he was entitled to a mistrial because of the admission of testimony about the video which had been agreed to be excluded.

HOLDING

The court examined the testimony surrounding the admission of evidence of the video. The court held that the testimony was elicited by the defense. The evidence of the video was not referred to by prosecutors. The testimony about the video came out because of repeated questioning by the defense. Such testimony constitutes invited error. Therefore, the issue is without merit.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO60693.pdf

NO. 2008-KA-00630-COA

QUINTIN WILLIAMS A/K/A QUINTIN LAMAR WILLIAMS APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - CONVICTED OF COUNT I, ARMED ROBBERY; COUNT II, KIDNAPPING; COUNT III, KIDNAPPING; AND COUNT IV, FELON IN POSSESSION OF A FIREARM

SENTENCED TO TWENTY-FIVE YEARS IN COUNT I; THIRTY YEARS IN COUNT II; THIRTY YEARS IN COUNT III; THREE YEARS IN COUNT IV; AND SENTENCED TO TEN YEARS PURSUANT TO MISSISSIPPI CODE ANNOTATED SECTION 97-37-37, WITH THE SENTENCES TO RUN CONSECUTIVELY IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS

TRIAL JUDGE: HON. FRANK G. VOLLOR

COURT FROM WHICH APPEALED: WARREN COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANT: PHILLIP BROADHEAD, LESLIE S. LEE
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: LADONNA C. HOLLAND
DISTRICT ATTORNEY: RICHARD EARL SMITH, JR.

LEE, P.J., FOR THE COURT

VOTES: KING, C.J., MYERS, P.J., IRVING, GRIFFIS, BARNES, ISHEE, ROBERTS, CARLTON AND MAXWELL, JJ., CONCUR

FACTS

Hargrove was struck in the head by an attacker in the parking lot of her apartment complex. The attacker demanded money and forced Hargrove in to the vehicle and told her to drive. Hargrove was six months pregnant and had her three year old son in the vehicle as well. The attacker told Hargrove to drive to a field where he exited the vehicle and ran away. Hargrove went to a hospital and reported the attack. Hargrove was able to observe the attacker clearly in her mirror as she drove. She saw the attacker several times around town but he was able to flee prior to police arriving. Officers received a tip that a man named "Little Quintin" had attacked Hargrove. Quintin Williams had a record with police and lived near Hargrove's apartment. Hargrove was able to identify Williams from a photo lineup and in court as her attacker. Williams was convicted and sentenced to consecutive sentences of ninety-eight years.

ISSUES

Williams now appeals, asserting the following issues: (1) the trial court erred in denying his motion to suppress the pretrial identification; (2) the trial court erred in failing to provide the jury with all of the exhibits and improperly addressed the jury; and (3) the jury's verdict was not supported by sufficient evidence and is against the overwhelming weight of the evidence.

HOLDING

Williams first argues that the court erred in failing to suppress his pre-trial identification. The court examined all of the evidence detailing the identification of Williams. Hargrove was able to closely observe Williams and gave a detailed description to police. She had seen Williams before the attack and was able to pick him out of a photo lineup. The court held that the record indicates that the photographic lineup was not impermissibly suggestive. Furthermore, there was substantial credible evidence supporting the trial court's ruling that there was not a substantial likelihood of irreparable misidentification. This issue was without merit.

Next, Williams argues that the court failed to provide the jury with all of the exhibits. During deliberations, the court sent to the jury two exhibits which it noted should have been sent when the jury retired to deliberate. Both sides consented to this submission and neither objected. This is not analogous to other cases where the court had reversed. Therefore, this issue is without merit. Further,

Williams argues that it was improper for the trial judge to address the jury and recognize that the jury was split after being told so by the foreman. However, Williams did not object to this at the time and cannot now object. This is also without merit.

Finally, Williams argues weight and sufficiency of the evidence. The court reviewed all of the evidence in this case and found that this issue was also without merit. The conviction and sentence was affirmed.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO60873.pdf

NO. 2008-KA-01544-COA

LONI MARIE RUTLAND APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - CONVICTED OF FELONIOUS CHILD ABUSE

SENTENCED TO TWENTY YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS, WITH TEN YEARS SUSPENDED AND TEN YEARS TO SERVE

TRIAL JUDGE: HON. FORREST A. JOHNSON, JR.
COURT FROM WHICH APPEALED: FRANKLIN COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANT: PHILLIP BROADHEAD, LESLIE S. LEE
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: JEFFREY A. KLINGFUSS
DISTRICT ATTORNEY: RONNIE LEE HARPER

LEE, P.J., FOR THE COURT

VOTES: KING, C.J., MYERS, P.J., IRVING, GRIFFIS, BARNES, ISHEE, ROBERTS AND MAXWELL, JJ., CONCUR. CARLTON, J., CONCURS IN RESULT ONLY WITHOUT SEPARATE WRITTEN OPINION

FACTS

While in Rutland's care, Rutland's seventeen month old daughter suffered several injuries including a fractured skull and a broken leg. Rutland claimed that the child tripped and fell injured herself repeatedly. Social workers investigated and Rutland became defensive. Rutland was indicted on two counts, one for the head injuries and one for the leg injuries. The court found insufficient evidence to convict Rutland of the head injuries and dismissed that count. Rutland was convicted for causing the leg injuries and was sentenced to twenty years with ten suspended.

ISSUES

Rutland now appeals, asserting the following issues: (1) the trial court erred in denying her motion for a judgment notwithstanding the verdict; (2) the verdict is against the overwhelming weight of the evidence; and (3) the trial court erred when it failed to grant a new trial due to juror misconduct.

HOLDING

First, Rutland argued sufficiency of the evidence. Because there was no direct evidence of abuse the state relied upon circumstantial evidence, mainly testimony from doctors and social workers. In reviewing all of the testimony, the court held that the evidence was sufficient to sustain the conviction.

Next, Rutland argued weight of the evidence. Again, the court noted that the evidence against Rutland was circumstantial. Even so, the verdict was supported by the overwhelming weight of the evidence. This issue was also without merit.

Finally, Rutland argues juror misconduct. One of the jurors during deliberation obtained a dictionary and looked up the definitions for "abuse" and "neglect." Rutland claims she was prejudiced by this and the state argued that there was no harm done. The court held that it could not find any prejudice from the jury reading the dictionary definitions. Rutland has not shown prejudice and therefore, this issue is without merit. The conviction and sentence was affirmed.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO60841.pdf

NO. 2008-KA-01576-COA

JOHNNY MCINNIS APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - CONVICTED OF BURGLARY OF A DWELLING HOUSE

SENTENCED AS A HABITUAL OFFENDER TO TWENTYFIVE YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS

TRIAL JUDGE: HON. BILLY JOE LANDRUM
COURT FROM WHICH APPEALED: JONES COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: JUSTIN TAYLOR COOK
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: DEIRDRE MCCRORY
DISTRICT ATTORNEY: ANTHONY J. BUCKLEY

KING, C.J., FOR THE COURT

VOTES: LEE AND MYERS, P.JJ., IRVING, GRIFFIS, BARNES, ISHEE, CARLTON AND MAXWELL, JJ., CONCUR. ROBERTS, J., CONCURS IN RESULT ONLY WITHOUT SEPARATE WRITTEN OPINION

FACTS

Kissenger was at home asleep when she was awakened by a noise. She saw a black male wearing a white tee shirt grab her purse from her dresser. Kissenger called 911 and officers immediately responded. As they approached Kissenger's home, an officer spotted someone matching the description given by Kissenger driving away. Officers pursued the vehicle which was driven by McInnis. A passenger, Armstrong was with McInnis. On the front seat of the vehicle next to McInnis was Kissenger's purse. McInnis was indicted and convicted and sentenced to twenty-five years in custody.

ISSUES

McInnis argued that the court erred in granting a jury instruction because of insufficient evidence, and in denying a circumstantial evidence instruction offered by the defense.

HOLDING

The first issue raised by McInnis is that the court erred in granting an accomplice instruction. The state argued that because McInnis offered proof that Armstrong possessed the purse, the instruction was proper. However, the court noted that there was no proof that McInnis acted as Armstrong's accomplice. Therefore, there was insufficient evidence to grant the instruction. However, because the evidence was sufficient to find that McInnis was guilty of burglary, the granting of the instruction was harmless.

Lastly, McInnis argues that the trial court erred in denying his circumstantial evidence instruction. Reviewing the evidence, the court held that the evidence was not wholly circumstantial and therefore, it was not error to deny the instruction. This issue is also without merit.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO61034.pdf

February 23, 2010

NO. 2008-KA-01523-COA

DANIEL BANKS A/K/A DANNY BANKS APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - AGGRAVATED ASSAULT

SENTENCED AS A HABITUAL OFFENDER TO TWENTY YEARS IN THE CUSTODY OF MISSISSIPPI DEPARTMENT OF CORRECTIONS WITHOUT ELIGIBILITY FOR PAROLE OR PROBATION

TRIAL JUDGE: HON. JANNIE M. LEWIS
COURT FROM WHICH APPEALED: YAZOO COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: IMHOTEP ALKEBU-LAN
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: LAURA HOGAN TEDDER
DISTRICT ATTORNEY: JAMES H. POWELL III

MAXWELL, J., FOR THE COURT

VOTES: KING, C.J., LEE AND MYERS, P.JJ., GRIFFIS, ISHEE, ROBERTS AND CARLTON, JJ., CONCUR. BARNES, J., CONCURS IN RESULT ONLY. IRVING, J., NOT PARTICIPATING.

FACTS

Palmer and Johnson lived together in a trailer. Johnson testified that she and Palmer argued and that Palmer threw her out of the trailer. Johnson then left with Banks. Palmer followed and caught Johnson and Banks in bed together. A fight ensued between Palmer and Banks and Palmer was stabbed. Johnson testified that she falsely confessed to the stabbing. Kenney testified that he was a bystander and observed Palmer yelling at Banks. He then saw Banks attack Palmer and saw Banks holding a bloody knife. Banks was indicted and convicted for aggravated assault. He was sentenced to twenty years as an habitual offender.

ISSUES

Banks raises five issues on appeal. He claims the circuit court erred in (1) denying his theory-of-the-case instruction; (2) prohibiting him from impeaching a witness with evidence of bias; (3) denying a mistrial after mention of Banks's criminal record; and (4) denying a mistrial during the State's closing argument. Banks further argues that cumulative errors denied him a fair trial.

HOLDING

Banks first argument is that the trial court erred in denying his proposed theory-of-the-case instruction. Banks requested the circuit court instruct the jury that: "Daniel Banks's theory of the case is that Adlean Johnson stabbed George Palmer with a knife and then threw the knife in the river and told officer [sic] they arrested the wrong man and if you so find you must find Daniel Banks not guilty." The court held that this instruction was an improper comment on the evidence and Banks's theory was fairly covered by other instructions.

Next, Banks argues that the court improperly denied his impeachment evidence. Banks's attorney attempted to question Banks's mother about a statement that Palmer made that he hated Banks. The court held this to be hearsay. The court held that the trial judge abused her discretion and improperly denied this impeachment evidence. However, the court found this error to be harmless because of the overwhelming evidence of guilt.

Next, Banks argues that reference to his criminal record was grounds for a mistrial. During Johnson's testimony, prosecutors asked her why she made a false confession. Johnson stated that she knew that Banks had a criminal record and she did not want to get him in more trouble. Banks objected and the trial judge sustained the objection. Banks moved for a mistrial which was denied. The court agreed that this sort of testimony was improper and inadmissible. However, the judge quickly sustained the defense objections and instructed the jury not consider the comments. Therefore, the court did not abuse it's discretion in denying the mistrial.

Next, Banks argues that the state committed reversible error in closing argument by commenting on his decision not to testify. The prosecutor said that Banks did not have a defense. Banks objected and the court sustained the objection. The prosecutor did not mention Banks failure to testify. Therefore, prejudicial error did not result.

Finally, Banks argues cumulative error. The court held that it only found harmless error on one count and therefor, cumulative error could not be found.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO61198.pdf

NO. 2008-KA-01427-COA

CHRISTOPHER LAMONT LOGAN APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - CONVICTED OF CAPITAL MURDER

SENTENCED TO LIFE IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS WITHOUT ELIGIBILITY FOR PAROLE

TRIAL JUDGE: HON. ROBERT B. HELFRICH
COURT FROM WHICH APPEALED: FORREST COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANT: GEORGE T. HOLMES, LESLIE S. LEE, GAY L. POLK-PAYTON
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: DEIRDRE MCCRORY
DISTRICT ATTORNEY: JON MARK WEATHERS

CARLTON, J., FOR THE COURT

VOTES: KING, C.J., LEE AND MYERS, P.JJ., IRVING, GRIFFIS, BARNES, ISHEE, ROBERTS AND MAXWELL, JJ., CONCUR.

FACTS

Logan and Gammage lived together and had a tumultuous relationship. Gammage had several children from other men and the children also lived with Logan and Gammage. Gammage left Hattiesburg for Ellisville to visit her mother. Gammage left her son, Jaylon, with Logan. Logan became angry that Gammage was staying overnight at Ellisville. Logan called Gammage that evening to inform her that Jaylon had stopped breathing. Logan called neighbors who could not resuscitate Jaylon. He was taken to a hospital where he died. Dr. Steven Hayne testified that Jaylon died of blunt force trauma to his abdomen. He also suffered other bruising and possible cigarette burns on his legs. Logan was arrested and found guilty of capital murder. He was sentenced to life without parole.

ISSUES

On appeal, Logan raises two issues: (1) whether the trial court erred by allowing evidence of prior alleged bad acts and (2) whether there is sufficient evidence in the record to support his conviction.

HOLDING

First, Logan argues that the court erred in allowing evidence of prior bad acts. The acts in question referred to Logan's prior acts of violence against Gammage. The court held that it was not an abuse of discretion to allow this testimony.

Next, Logan challenges the sufficiency of the evidence. In reviewing the evidence the court found that it was more than sufficient to sustain the conviction. The only reasonable explanation for the injuries was blunt force trauma and Logan was the only person with the child. Logan's testimony was more than countered by the medical testimony. This assignment of error is without merit.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO61364.pdf

NO. 2008-KA-02152-COA

ROLAND VANDER BOND, JR. APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - CONVICTED OF COUNT I, POSSESSION OF METHAMPHETAMINE WITH THE INTENT TO DISTRIBUTE, AND COUNT II, POSSESSION OF PRECURSORS WITH THE INTENT TO MANUFACTURE METHAMPHETAMINE

SENTENCED AS A HABITUAL OFFENDER TO FIFTEEN YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS FOR EACH COUNT, WITH THE SENTENCES TO RUN CONCURRENTLY

TRIAL JUDGE: HON. ROGER T. CLARK
COURT FROM WHICH APPEALED: HARRISON COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: W. DANIEL HINCHCLIFF
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: JOHN R. HENRY
DISTRICT ATTORNEY: CONO A. CARANNA II

ROBERTS, J., FOR THE COURT

VOTES: KING, C.J., LEE AND MYERS, P.JJ., GRIFFIS, BARNES, ISHEE, CARLTON AND MAXWELL, JJ., CONCUR. IRVING, J., NOT PARTICIPATING.

FACTS

The Long Beach Police Department searched a residence in that city. The property was owned by Young who testified that Bond lived there with her. Bond's vehicle was in the driveway and his personal possessions were in the house. Police also found a check book listing Young and Bond's names and the address of the house. Inside the house police found methamphetamine and precursor materials to manufacturing methamphetamine. Bond maintained that he did not live in the house and knew nothing of the drugs or materials. He offered witnesses who said he lived at another house. However, the arresting officer testified that Bond listed Young's house as his address on his arrest forms. Bond was convicted of possession of methamphetamine and precursors and sentenced as an habitual offender to fifteen years.

ISSUES

On appeal, Bond argued the weight and sufficiency of the evidence.

HOLDING

Bond's argument is limited to his charge of possession with intent to distribute. Bond argued that the quantity of the drug was not enough to infer intent to distribute and was more in line with personal consumption. The problem with Bond's argument is that he testified that he did not use methamphetamine. Also, police officers testified that other items were found at the scene that indicated that the drugs were for distribution, including zip-lock bags and scales. Based upon the totality of the evidence, it was sufficient to sustain the conviction.

Next, Bond argues weight of the evidence. Bond argues that there was no evidence that anyone observed any sales or transactions. However, considering the totality of the evidence, allowing the verdict to stand would not sanction an unconscionable injustice. The conviction and sentence is affirmed.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO61194.pdf

NO. 2008-KA-00793-COA

DEBRA S. FIELD APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - CONVICTED OF POSSESSION OF COCAINE AND SENTENCED TO EIGHT YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS

TRIAL JUDGE: HON. VERNON R. COTTEN
COURT FROM WHICH APPEALED: NEWTON COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANT: EDMUND J. PHILLIPS, JR., P. SHAWN HARRIS
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: JOHN R. HENRY, JR.
DISTRICT ATTORNEY: MARK SHELDON DUNCAN

BARNES, J., FOR THE COURT

VOTES: KING, C.J., LEE AND MYERS, P.JJ., IRVING, GRIFFIS, ISHEE, ROBERTS, CARLTON AND MAXWELL, JJ., CONCUR.

FACTS

Field was pulled over at a traffic stop. She informed officers that her license was suspended. She admitted to drinking and consented to a search of her vehicle which she said belonged to someone else. The search yielded a small amount of marijuana in Field's cigarette case, and a small quantity of cocaine. Field was tried and found guilty of misdemeanor possession of marijuana and the jury was not able to return a verdict on the cocaine charge. Field was re-tried on the cocaine charge and was convicted and sentenced to eight years. During the cocaine trial, officers were allowed to discuss the marijuana that was also found on Fields. The defense was not allowed to discuss the fact that the first jury was not able to reach a verdict on the cocaine possession.

ISSUES

Field now raises four issues on appeal: (1) whether the circuit court erred in sentencing Field to the maximum sentence allowable by law; (2) whether the circuit court erred in refusing to give a jury instruction which allegedly articulated Field's theory of the case; (3) whether the circuit court erred in admitting evidence of other crimes; and (4) whether the search of the truck Field was driving was reasonable under the Fourth Amendment to the United States Constitution.

HOLDING

First, Fields argues that it was error to sentence her to the maximum allowed by law. Field argues that the trial judge stated that he had "no choice" but to sentence her to the maximum. Sentencing is within the discretion of the trial judge and will not be disturbed if within that allowed by law. Here, the judge took into consideration Field's circumstances and sentenced her appropriately. There was no error.

Next, Field argues that the court erred in denying her jury instruction stating that she is a competent witness. The court held that it was proper to deny an instruction informing the jury that a witness is competent to testify.

Next, Field argues that it was error to admit evidence of other crimes. First she argues that it was error to admit evidence of the marijuana. Here, the court allowed officers to discuss the finding of marijuana. The court reasoned that officers did this to tell the complete story. Also, Field admitted to possessing the marijuana. Therefore, this was not error.

Next, Field argues that the court erred in not allowing evidence that the first jury was hung on the cocaine charges. Field argues that the state opened the door to this evidence when it discussed the marijuana. However, the fact that the state opened the door to the marijuana testimony had nothing to do with the previous jury. This evidence was properly excluded.

Finally, Field argues that the search of her vehicle was not reasonable. Field argues that officers failed to comply with department policy when they set up the road block. The court held that if there were minor deviations in department policy, it did not affect the validity of the search and this issue is also without merit. The conviction and sentence was affirmed.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO61556.pdf

NO. 2009-KA-00092-COA

NOLAN WILLIAMS, JR. APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - POSSESSION OF COCAINE WITH INTENT TO DISTRIBUTE

SENTENCED TO THIRTY-FIVE YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS, WITH TWENTY-THREE YEARS TO SERVE, TWELVE YEARS SUSPENDED, AND FIVE YEARS OF POSTRELEASE SUPERVISION, AND TO PAY A FINE OF $5,000

TRIAL JUDGE: HON. DAVID H. STRONG, JR.
COURT FROM WHICH APPEALED: PIKE COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANT: BENJAMIN ALLEN SUBER, LESLIE S. LEE
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: W. GLENN WATTS
DISTRICT ATTORNEY: DEE T. BATES, JR.

BARNES, J., FOR THE COURT

VOTES: KING, C.J., LEE AND MYERS, P.JJ., GRIFFIS, ISHEE, ROBERTS, CARLTON AND MAXWELL, JJ., CONCUR. IRVING, J., NOT PARTICIPATING

FACTS

During an undercover drug operation, Williams sold cocaine to an officer. Williams remained under surveillance and was seen leaving the area in a vehicle. The vehicle was pulled over for traffic violations and Williams had an open container of beer. In a pat down search, A small amount of cocaine was found on Williams along with $800 in cash. Williams had pleaded guilty to the offense of possession with intent to deliver some years earlier. He was indicted and convicted as an habitual offender. He was sentenced to twenty-three years in custody.

ISSUE

On appeal, Williams argues the weight of the evidence.

HOLDING

Williams admits that he was in possession of cocaine but claims that it was for personal consumption. However, in reviewing the evidence, the court found it to be ample to support the verdict. The officer testified that Williams had sold cocaine and he possessed the large amount of cash. Further, there were no items found that would indicate personal use such as pipes. Allowing the verdict to stand does not sanction an unconscionable injustice.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO61196.pdf

NO. 2008-KA-01722-COA

KIRK VINCENT MAYERS APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - TWO COUNTS AGGRAVATED ASSAULT UPON A LAW ENFORCEMENT OFFICER, COUNT III, POSSESSION OF A STOLEN FIREARM; COUNT IV, POSSESSION OF A FIREARM BY A CONVICTED FELON,

SENTENCED ON COUNT I TO THIRTY YEARS; COUNT II, THIRTY YEARS; COUNT III SENTENCED TO FIVE YEARS; COUNT IV, THREE YEARS, AND SENTENCED TO TEN

ADDITIONAL YEARS EACH FOR COUNTS I AND II, WITH THE SENTENCES TO RUN CONSECUTIVELY IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS WITHOUT ELIGIBILITY FOR PAROLE OR PROBATION

DISPOSITION: AFFIRMED IN PART; VACATED AND REMANDED IN PART

TRIAL JUDGE: HON. SAMAC S. RICHARDSON
COURT FROM WHICH APPEALED: RANKIN COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: GEORGE T. HOLMES
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: LAURA HOGAN TEDDER
DISTRICT ATTORNEY: MICHAEL GUEST

LEE, P.J., FOR THE COURT

VOTES: KING, C.J., MYERS, P.J., GRIFFIS, BARNES, ISHEE, ROBERTS AND CARLTON, JJ., CONCUR. MAXWELL, J., SPECIALLY CONCURS WITH SEPARATE WRITTEN OPINION JOINED BY BARNES AND ROBERTS, JJ. IRVING, J., NOT PARTICIPATING.

FACTS

Police were executing a search warrant on an apartment. The SWAT team knocked and announced their presence and made a forceful entry into the apartment. Upon opening the door, gunshots came from inside. Two officers were wounded. Mayers was found inside lying on the kitchen floor. A .22 caliber pistol was found near Mayers. This is the same weapon that caused the injuries. Mayers was convicted of aggravated assault on a police officer and other related crimes. He was sentenced to eighty-eight years in custody.

ISSUES

Mayers now appeals his convictions and sentences, asserting the following issues: (1) the indictment charged simple rather than aggravated assault; (2) the State failed to prove that he knowingly assaulted law enforcement officers; (3) the State failed to prove that he knowingly possessed a stolen firearm; (4) the trial court erroneously refused a self-defense instruction; (5) he was entitled to a cautionary instruction concerning his prior convictions; (6) Juror 18 should have been stricken for cause; (7) the State should have been required to stipulate to his prior convictions under Count IV; (8) the trial court allowed improper opinion evidence; and (9) his sentence is illegal.

HOLDING

First, Mayers argues that the aggravated assault portion of his indictment should be reversed because the indictment does not allege that Mayers used a deadly weapon. The indictment does state that Mayers used a "gun" in the commission of his crime. The court noted that formal or technical words are not necessary in an indictment and that saying that he used a "gun" was sufficient.

Next, Mayers argues that the state failed to prove that he knowingly shot a police officer. He argues that he could not have known who was breaking into his home. Witnesses testified that police were wearing marked vests and uniforms and that they loudly announced their presence. This was an issue for the jury to decide and they were presented with enough evidence to find for the state.

Next, Mayers argues that he did not know that the gun he used was stolen. The jury heard that Mayers took the gun as payment for cocaine and that a reasonable person could infer that it had been stolen.

Next, Mayer argues that he was entitled to a self-defense instruction which would be a defense to his conviction of a felon in possession of a weapon. The court has held that self-defense is not a defense to felon in possession of a weapon and therefore this issue is without merit.

Next, Mayers argues that he was entitled to a cautionary instruction concerning his previous conviction. However, the court examined the instruction and found it to be confusing and not an accurate statement of the law. Therefore, the instruction was properly denied.

Next, Mayers argues that a certain juror should have been stricken for cause because he stated that he had work related issues that would cause him to not focus on the case. Excusing jurors is within the discretion of the trial court. It is assumed that a fair panel has been selected. The challenging party must put forth evidence to overcome this presumption. Mayers did not do so.

Next, Mayers argues that evidence of his prior convictions was outweighed by the prejudice it caused. The state argued that it had to show evidence of the prior convictions to show motive. Mayers knew that if police found stolen goods in his apartment that his probation would be revoked. The court held that the probative value of the evidence outweighed the prejudice. Here, the court held that the trial judge did not abuse his discretion and evidence of the prior convictions were not unduly prejudicial.

Next, Mayers argues that a witness was allowed to give improper opinion testimony. The witness was not an expert but instead testified about what he saw. Here, the court found that the testimony was nothing more that his opinion based upon personal observation. This issue is without merit.

Finally, Mayers argues that his sentence was illegal for several reasons. Finding that a portion of the sentence violated the prohibition against ex post facto application of penalties, the court reversed a portion of the sentence. Here, the law that allowed an additional ten years to the aggravated assault conviction was enacted in 2007. The crime occurred in 2006. The court held this to be plain error and reversed the portion of the sentence adding two additional ten year terms. The case was remanded for the limited purpose of re-sentencing pursuant to this directive. Mayers also argued that there were errors with sentence enhancement, double jeopardy, *Apprendi*, and proportionality. However, the court found no other errors with sentencing.

MAXWELL, J., SPECIALLY CONCURRING

Maxwell writes separately to discuss application of section 97-37-37 which has never been addressed by the appellate courts. This section deals with the additional consecutive ten year sentence if a firearm is used by a convicted felon. Maxwell warns prosecutors that if they are to charge a violation of 97-37-37 for a crime where the display of the weapon is not an element of the crime, it is better to list this offense in the indictment in order not to run afoul of *Apprendi*.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO59625.pdf

NO. 2009-KM-00237-COA

CHRISTOPHER FLUKER APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - MISDEMEANOR - CONVICTED OF DUI

SENTENCED TO FORTY-EIGHT HOURS IN THE COUNTY JAIL, TO PAY A $1000 FINE, AND PARTICIPATION IN THE MISSISSIPPI ALCOHOL SAFETY EDUCATION PROGRAM

TRIAL JUDGE: HON. JOSEPH H. LOPER, JR.
COURT FROM WHICH APPEALED: GRENADA COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANT: TROY PHILIP HUSKEY, J. STEPHEN WRIGHT
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: LADONNA C. HOLLAND
COUNTY PROSECUTOR: JAY GORE III

CONSOLIDATED WITH

NO. 2009-KM-00238-COA

CHRISTOPHER FLUKER APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - MISDEMEANOR - CONVICTED OF DRIVING NEAR THE CENTER LINE FOR MORE THAN 200 YARDS AND SENTENCED TO PAY A $40.50 FINE

DISPOSITION: REVERSED AND RENDERED:

TRIAL JUDGE: HON. JOSEPH H. LOPER, JR.
COURT FROM WHICH APPEALED: GRENADA COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANT: TROY PHILIP HUSKEY, J. STEPHEN WRIGHT

ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: LADONNA C. HOLLAND
COUNTY PROSECUTOR: JAY GORE III

KING, C.J., FOR THE COURT

VOTES: LEE AND MYERS, P.JJ., IRVING, GRIFFIS, BARNES, ISHEE, ROBERTS AND MAXWELL, JJ., CONCUR. CARLTON, J., CONCURS IN PART AND DISSENTS IN PART WITH SEPARATE WRITTEN OPINION

FACTS

Fluker was convicted of DUI refusal and driving near the center line. He was pulled over when an officer noticed him driving near the center line and then smelled alcohol when he was pulled over. Fluker took a portable breathalyzer at the scene and was not able to recite his ABC's. At the station he refused a breath test.

ISSUES

Fluker appeals, raising four issues: (1) whether the State failed to establish the existence of probable cause for the stop; (2) whether the State met its burden of proof for conviction under Mississippi Code Annotated section 63-3-617 (Rev. 2004); (3) whether Fluker received ineffective assistance of counsel; and (4) whether the circuit court erred in refusing to allow Fluker to modify the record of his trial.

HOLDING

First, Fluker argues that the state failed to establish probable cause for his initial stop. He claims that he was stopped because the officer was suspicious of tinted windows. The officer testified that the vehicle was traveling near the center line behind two other vehicles and had tinted windows. Therefore, the stop was lawful.

Next, Fluker argues that the state did not prove that he drove near the center line for two hundred yards. The court found that there was not any testimony during the trial that Fluker drove near the center line. The officer merely testified that Fluker was arrested for the crime. Additionally, there is a question as to whether the statute applies to this case. The history of the statute indicates that it is intended to keep people from failing to allow others to pass. This has nothing to do with why Fluker was pulled over. Therefore, the court reversed this portion of the conviction.

Next, Fluker argues ineffective assistance of counsel. However, the court held that this issue is better addressed on PCR review and declined to review the merits.

Finally, Fluker argues that the circuit court erred in refusing to allow Fluker to modify the record on appeal. The court held that the information Fluker attempted to submit was outside the record and therefore properly excluded.

The conviction of DUI refusal was affirmed. The conviction for driving near the center line was reversed.

CARLTON, J., CONCURRING IN PART, DISSENTING IN PART:

Carlton would affirm as to all issues and would affirm the conviction.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO61151.pdf

NO. 2008-KA-00437-COA

WILLIE JOE ROBINSON APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - CONVICTED OF BURGLARY OF A BUILDING

SENTENCED AS A HABITUAL OFFENDER TO SEVEN YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS

DISPOSITION: REVERSED AND REMANDED - 02/23/2010

TRIAL JUDGE: HON. KENNETH L. THOMAS
COURT FROM WHICH APPEALED: COAHOMA COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANT: W. DANIEL HINCHCLIFF, LESLIE S. LEE
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: JEFFREY A. KLINGFUSS
DISTRICT ATTORNEY: LAURENCE Y. MELLEN

CARLTON, J., FOR THE COURT

VOTES: KING, C.J., LEE, P.J., GRIFFIS AND ISHEE, JJ., CONCUR. BARNES, J., CONCURS IN PART AND IN THE RESULT WITHOUT SEPARATE WRITTEN OPINION. IRVING, ROBERTS AND MAXWELL, JJ., CONCUR IN RESULT ONLY WITHOUT SEPARATE WRITTEN OPINION. MYERS, P.J., DISSENTS WITHOUT SEPARATE WRITTEN OPINION

FACTS

Robinson was spotted by officers entering a residence through a window. Officers quickly surrounded the building to prevent Robinson from escaping. Officers entered the building and found Robinson on the second floor. Nothing was missing but the home was in shambles. The owner of

the home testified that the home was vacant but that she stored valuables in the house. Robinson was convicted of burglary and sentenced as an habitual offender.

ISSUES

On appeal, Robinson raises the following issues: (1) whether the circuit court erred in failing to sua sponte order a mistrial when the prosecutor made impermissible comments on Robinson's exercise of his Fifth Amendment right not to testify and Robinson's propensity to steal based on a prior conviction, and (2) whether the circuit court erred by admitting evidence of Robinson's prior conviction.

HOLDING

First, Robinson argues that prosecutors comments during closing argument were improper. He argues that comments were made about his right not to testify. However, Robinson failed to object during trial. The court decided that it need not address this issue as Robinson's second issue merited reversal.

Robinson's second issue also concerned prosecutors comments during closing. Here prosecutors stated that the jury could consider Robinson's prior conviction as evidence that he is a thief. The state impermissibly used the prior conviction as evidence of Robinson's predisposition to steal. Further, the court erred by allowing the state to enter evidence of his prior conviction. There was no relationship between the prior conviction and the current charges. The outcome of Robinson's trial centered upon his intent to steal once inside. This distinguishes the charges at hand from the offense of trespassing. The only evidence of intent to steal was the prior conviction. Therefore, the trial court erred in allowing admission of the prior crime and the prosecutor erred in commenting on the prior conviction in closing arguments. The conviction and sentence was reversed and remanded.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO61179.pdf

NO. 2008-KA-01717-COA

HENRY LINDSEY APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - CONVICTED OF POSSESSION OF CONTRABAND IN A PRIVATE CORRECTIONAL FACILITY

SENTENCED TO SEVEN YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS

TRIAL JUDGE: HON. MARCUS D. GORDON
COURT FROM WHICH APPEALED: LEAKE COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: THOMAS A. PRITCHARD
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: LADONNA C. HOLLAND
DISTRICT ATTORNEY: MARK SHELDON DUNCAN

GRIFFIS, J., FOR THE COURT

VOTES: MYERS, P.J., IRVING, BARNES, ROBERTS AND MAXWELL, JJ., CONCUR. CARLTON, J., DISSENTS WITH SEPARATE WRITTEN OPINION JOINED BY KING, C.J., LEE, P.J., AND ISHEE, J.

FACTS

Lindsey was in the custody of MDOC. Lindsey was found to be in possession of contraband, a sharpened instrument. He was found guilty and sentenced to seven years.

ISSUES

On appeal, Lindsey argues that the trial court erred in failing to give a limiting instruction and in failing to recuse.

HOLDING

First, Lindsey argues that the court erred in allowing the jury to hear evidence of other crimes without a limiting instruction. Here, the judge sustained an objection to evidence of rules violations in prison. Trial counsel did not request a limiting instruction. The court is not required to issue an instruction sua sponte so there was no error.

Next, Lindsey argues that the trial judge should have recused himself. Here, Lindsey failed to object to the trial judge. Failure to object to a trial judge's appearance is a waiver of any objection. Finding no error, the conviction and sentence was affirmed.

CARLTON, J., DISSENTING

Carlton would hold that the judge's instructions to the jury were improper and misinformed the jury. She would reverse and remand for a new trial.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO60866.pdf

NO. 2009-KA-00050-COA

DERRICK CHATMAN APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - CONVICTED OF COUNT I, AGGRAVATED ASSAULT AND COUNT II, BURGLARY OF A DWELLING

COUNT I SENTENCED TO TWENTY YEARS, WITH FIVE YEARS SUSPENDED AND FIVE YEARS OF SUPERVISED PROBATION, AND ON COUNT II SENTENCED TO TWENTY-FIVE YEARS, WITH TEN YEARS SUSPENDED AND FIVE YEARS OF SUPERVISED PROBATION, TO RUN CONSECUTIVELY IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS

TRIAL JUDGE: HON. W. ASHLEY HINES
COURT FROM WHICH APPEALED: WASHINGTON COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANT: W. DANIEL HINCHCLIFF, LESLIE S. LEE, CLAYTON MATTHEW CUMMINGS, DERRICK CHATMAN (PRO SE)

ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: CHARLES W. MARIS, JR.
DISTRICT ATTORNEY: WILLIE DEWAYNE RICHARDSON

CARLTON, J., FOR THE COURT

VOTES: KING, C.J., LEE AND MYERS, P.JJ., GRIFFIS, BARNES, ISHEE, ROBERTS AND MAXWELL, JJ., CONCUR. IRVING, J., CONCURS IN RESULT ONLY

FACTS

Late one night, Chatman called Parker and requested sex. She declined. He called again and again she declined. Later, Parker heard her dog barking and noticed that her motion detector had been tripped. She called police. Before police arrived, Chatman broke into her home and began beating her with a pipe. On the stand Chatman admitting breaking in to the house and beating Parker with a pipe. He said he did so because he was angry. On appeal, Chatman's counsel filed a *Lindsey* brief stating that they could find no issues which merit appeal. Chatman filed a pro se brief citing five issues.

ISSUE

The court examined whether there were any issues meriting discussion on appeal.

HOLDING

The court held that the proper *Lindsey* procedure was followed and Chatman raises no arguable issues in support of his appeal which merit discussion.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO61847.pdf

NO. 2009-KA-00282-COA

PAUL DAVID GRAVES, JR. APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL – FELONY - CONVICTED OF MANSLAUGHTER

SENTENCED TO FOURTEEN YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS

TRIAL JUDGE: HON. ROGER T. CLARK
COURT FROM WHICH APPEALED: HARRISON COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: ERIN ELIZABETH PRIDGEN
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: LADONNA C. HOLLAND
DISTRICT ATTORNEY: CONO A. CARANNA, II

CARLTON, J., FOR THE COURT

VOTES: GRIFFIS, ISHEE AND MAXWELL, JJ., CONCUR. BARNES, J., CONCURS IN PART AND IN THE RESULT. IRVING, J., CONCURS IN RESULT ONLY. LEE, P.J., CONCURS IN PART AND IN THE RESULT WITH SEPARATE WRITTEN OPINION JOINED BY KING, C.J., MYERS, P.J., AND ROBERTS, J.

FACTS

Graves was convicted of the manslaughter of his brother A.C. Testimony conflicts as towhat caused the altercation but all agree that Graves and A.C. argued and struggled over a gun. A.C. was killed. Graves was arrested and indicted for murder. The jury was instructed on murder, manslaughter and self-defense. The jury convicted Graves of manslaughter.

ISSUES

Graves appeals asserting the following issues: (1) the trial court erred in failing to grant a mistrial; (2) the trial court erred in failing to grant his motion for a new trial; and (3) the trial court erred in excluding certain testimony regarding the victim.

HOLDING

First, Graves argues that he was entitled to a mistrial because a witness for the state cried and was noticeably upset during her testimony. The record does not mention an emotional outburst. Absent an abuse of discretion, the court will not upset a trial court's denial of a motion for mistrial. Here, nothing in the record points to an abuse by the judge and this issue is without merit.

Next, Graves argues that the verdict is against the weight of the evidence. The court reviewed the record and found that although there was contradicting testimony, it was for the jury to resolve. This does not merit a new trial.

Finally, Graves argues that it was error to exclude evidence of A.C's previous incarceration. A.C previously shot his brother in the leg and served time in federal prison. A.C. was angry that Graves did not give him money while he was incarcerated. The judge disallowed any testimony about the previous incarceration. The court held that the exclusion of evidence of this previous incarceration was harmless error because the jury received other evidence of the animosity of the brothers.

LEE, P.J., CONCURRING IN PART AND IN RESULT

Lee would not find that the trial court committed any error and would affirm.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO61170.pdf

March 2, 2010

NO. 2008-KA-01284-COA

JEFFREY SHELLEY APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - SALE OF COCAINE

SENTENCED TO TWENTY YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS, WITH FIFTEEN YEARS TO SERVE AND FIVE YEARS OF POST-RELEASE SUPERVISION, WITH THE SENTENCE TO RUN CONSECUTIVELY TO THE SENTENCE IN WARREN COUNTY CAUSE NUMBER 05-0305CRV

TRIAL JUDGE: HON. FRANK G. VOLLOR
COURT FROM WHICH APPEALED: WARREN COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: ERIN E. PRIDGEN
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: LAURA H. TEDDER
DISTRICT ATTORNEY: RICHARD EARL SMITH JR.

IRVING, J., FOR THE COURT

VOTES: LEE AND MYERS, P.JJ., GRIFFIS, BARNES, ISHEE, ROBERTS AND MAXWELL, JJ., CONCUR. KING, C.J., CONCURS IN RESULT ONLY

FACTS

Shelley was convicted of selling cocaine. Johnson was working as a paid informant when she approached Shelley whom she previously knew. She was driving a vehicle outfitted with cameras by the police department and was give forty dollars in marked money. Shelley took Johnson to a place where he exited the vehicle and returned with the drugs. Shelley was convicted and sentenced to twenty years.

ISSUES

Shelley appeals and contends that the circuit court erred in allowing the State to proceed with an allegedly improper peremptory strike and in failing to object sua sponte to remarks made by the prosecutors during closing argument.

HOLDING

First, Shelley argues that the court erred in allowing prosecutors to peremptorily strike a juror for impermissible reasons. The prosecutor offered as a reason for his strike that the male juror had long hair and an earring. The court held this to be a valid non-racial reason for the strike.

Next, Shelley argues that the court failed to object sua sponte to prosecutor's closing arguments. The prosecution argued to the jury that there was a drug problem in Warren County and it was up to them to clean it up. The argument was clearly improper. However, Shelley did not object to the comments. The only question was whether the court should have done so on its own. The court found that the remarks did not rise to this level but were instead merely harmless error. The conviction was affirmed.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO61113.pdf

NO. 2008-KA-01285-COA

JERRY MOSES APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - CONVICTED OF CARJACKING

SENTENCED TO FIFTEEN YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS AND TO PAY A $2,500 FINE

TRIAL JUDGE: HON. RICHARD A. SMITH
COURT FROM WHICH APPEALED: WASHINGTON COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: E. TUCKER GORE
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL

BY: LISA LYNN BLOUNT
DISTRICT ATTORNEY: WILLIE DEWAYNE RICHARDSON

IRVING, J., FOR THE COURT

VOTES: KING, C.J., LEE AND MYERS, P.JJ., GRIFFIS, ISHEE AND MAXWELL, JJ., CONCUR. BARNES AND ROBERTS, JJ., CONCUR IN RESULT ONLY

FACTS

Thomas was assaulted in the parking lot of Jubliee Casino by two men. She dropped her keys during the attack and one of the man picked them up and entered her vehicle. The other man followed and they drove off. Thomas entered the casino and reported the crime. The head of security viewed video of the attack and confirmed the story. He noticed a suspicious vehicle remaining in the parking lot. The vehicle belonged to Kennedy's mother. Police interviewed Kennedy's mother and found out that Moses was with Kennedy. Thomas's vehicle was recovered several weeks later in Texas. In the car was a piece of paper and a photograph of Moses mother. Moses was convicted of carjacking and sentenced to fifteen years.

ISSUES

Moses appeals and asserts (1) that the trial court erred in refusing to grant his proffered circumstantial-evidence jury instruction, (2) that there was insufficient evidence to support the verdict against him, (3) that the verdict is against the overwhelming weight of the evidence, and (4) that the trial court erred in admitting certain evidence.

HOLDING

First, Moses argues that the court erred in refusing his circumstantial evidence instruction. A circumstantial instruction is only required when there is no eyewitness nor a confession. Here, Kennedy pleaded guilty and offered a confession. However, he refused to implicate Moses on the stand. Therefore, it was error to deny the circumstantial evidence instruction. However, this error was harmless given the overwhelming weight of circumstantial evidence.

Next, Moses argued the sufficiency of the evidence. The court reviewed the evidence and found that it was sufficient to support the verdict.

Next, Moses argued the weight of the evidence. The court found that allowing the verdict to stand does not sanction an unconscionable injustice.

Finally, Moses argues error in the admission of evidence. The court reviewed the instances of inadmissible evidence and found no error. Either Moses opened the door to the evidence or he did not object to the admission. Therefore, there was no error and the conviction and verdict was affirmed.

To View the Full Opinion Click Below:

http://www.mssc.state.ms.us/Images/Opinions/CO61431.pdf

NO. 2008-KA-02095-COA

NATHANIEL LAVELL COLEMAN APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - CONVICTED OF FELONY MURDER

SENTENCED TO LIFE IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS

TRIAL JUDGE: HON. DALE HARKEY
COURT FROM WHICH APPEALED: JACKSON COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: ERIN ELIZABETH PRIDGEN
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: JOHN R. HENRY JR.
DISTRICT ATTORNEY: ANTHONY N. LAWRENCE III

IRVING, J., FOR THE COURT

VOTES: KING, C.J., LEE AND MYERS, P.JJ., GRIFFIS, BARNES, ISHEE, ROBERTS AND MAXWELL, JJ., CONCUR.

FACTS

Dott was shot and killed outside Franklin's home. The record shows that Franklin was the intended target. Franklin came home and noticed that his home was burglarized. A trail of items form his home led to Nicholas and Latterice's home. Franklin confronted them and when an argument ensued Franklin left. Others were summoned to the scene by Nicholas and Latterice. Among those were Coleman. Coleman gave a statement wherein he implicated Latterice as the shooter. Coleman admitted to having a gun at the scene but denied firing it. Coleman was convicted of felony murder and sentenced to life.

ISSUES

Coleman appeals and asserts that he was denied effective assistance of counsel and that the verdict is against the overwhelming weight of the evidence.

HOLDING

First, Coleman argues ineffective assistance of counsel in that his attorney requested a continuance and the court only granted one day. The continuance was requested because the state elected to indict Coleman for felony murder prior to trial. The attorney wanted to research the felony

murder statute. The court granted a one day delay and noted that the evidence was the same. The decision to grant a continuance is within the discretion of the trial court. There is no evidence that the court abused its discretion and in fact the court noted that there appeared to be no reason to even grant the one day extension.

Finally, the court examined the weight of the evidence. The court reviewed the evidence and noted that Coleman drove to the location with a weapon, and that he rode with Latterice who stated that he wanted to kill Franklin. Allowing the verdict to stand does not sanction an unconscionable injustice.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO61381.pdf

NO. 2009-KA-00317-COA

OTTIS J. CUMMINGS, JR. A/K/A OTTIS JUNIOR CUMMINGS A/K/A OTIS CUMMINGS APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - FELONY DUI

SENTENCED AS A HABITUAL OFFENDER TO LIFE IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS WITHOUT ELIGIBILITY FOR PAROLE OR PROBATION

TRIAL JUDGE: HON. C.E. MORGAN III
COURT FROM WHICH APPEALED: CHOCTAW COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: BENJAMIN ALLEN SUBER
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: BILLY L. GORE
DISTRICT ATTORNEY: DOUG EVANS

LEE, P.J., FOR THE COURT

VOTES: KING, C.J., MYERS, P.J., IRVING, GRIFFIS, BARNES, ISHEE, ROBERTS AND MAXWELL, JJ., CONCUR

FACTS

Cummings was clocked on radar driving eighty in a fifty-five mile an hour zone. An officer pursued Cummings for two miles at speeds of over one hundred miles per hour. When Cummings pulled over, he was slumped over in his seat and smelled of alcohol and had an open beer on the floor. He slurred his speech and his pupils were dilated. He stated that he only drank a small amount and decided not to drink any more. He was convicted of felony DUI and sentenced to life in prison.

ISSUES

Cummings now appeals, asserting the following issues: (1) his sentence is disproportionate to the crime and constitutes cruel and unusual punishment; and (2) the verdict is against the overwhelming weight of the evidence.

HOLDING

First, Cummings argues that his sentence is disproportionate to his crime. A sentence within the statutory limits will not be disturbed on appeal. Further, Cummings was sentenced as an habitual offender. His previous crimes were burglary of a dwelling, aggravated assault and five prior DUI convictions. In light of the gravity of the offense and the prior convictions, the court does not need to proceed to a proportionality analysis.

Finally, the court examined the weight of the evidence. After reviewing the evidence, the court held that allowing the verdict to stand does not sanction an unconscionable injustice.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO61180.pdf

NO. 2008-KA-01593-COA

THOMAS E. DAVID A/K/A THOMAS EUGENE DAVID APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - AGGRAVATED ASSAULT

SENTENCED TO FIFTEEN YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS WITH FIVE YEARS OF POST-RELEASE SUPERVISION

TRIAL JUDGE: HON. JAMES MCCLURE III
COURT FROM WHICH APPEALED: TATE COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: B. BRENNAN HORAN
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: LAURA HOGAN TEDDER
DISTRICT ATTORNEY: JOHN W. CHAMPION

GRIFFIS, J., FOR THE COURT

VOTES: LEE AND MYERS, P.JJ., BARNES, ISHEE, ROBERTS, AND MAXWELL, JJ., CONCUR. KING, C.J., AND IRVING, J., CONCUR IN RESULT ONLY

FACTS

David drove his vehicle down Wall Hill road when he passed Hancock on his tractor. David narrowly missed another vehicle as he passed Hancock. David pulled his vehicle over and waited for

Hancock to approach. David exited his vehicle and began cursing Hancock. David pulled out a pistol and told Hancock to back off. Hancock wrote down David's tag number and notified authorities. David was arrested for aggravated assault. Prior to trial David saw Hancock's wife Joanne driving along the same road. He rolled down his window and told Joanne that the family had caused him a great deal of trouble and that he would not forget it. David was convicted of aggravated assault and sentenced to fifteen years.

ISSUES

David argues that his case should be reversed because: (1) the trial court erred in allowing Joanne Hancock (Joanne) to testify; (2) jury instruction D-5 was denied; and (3) his sentence was excessive.

HOLDING

First, David argues that Joanne should not have been allowed to testify because her testimony was not relevant. The court weighed the testimony and found that its probative value did not outweigh its prejudicial effect. Here, the testimony was offered to show David's state of mind and the trial court did not abuse its discretion.

Next, David argues that the court erred when it denied a requested instruction on self-defense. However, the court found that the self-defense instruction was properly covered in other instructions. Therefore, it was not error to deny this instruction.

Finally, David argues that his sentence was excessive. Here, the sentence was within the statutory guidelines and it was not excessive.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO61418.pdf

NO. 2008-KA-01684-COA

KEITH SPEARMAN APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - ATTEMPTED BURGLARY OF A BUILDING

SENTENCED TO FIVE YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS, WITH TWO YEARS TO SERVE AND THREE YEARS SUSPENDED

TRIAL JUDGE: HON. ALBERT B. SMITH III
COURT FROM WHICH APPEALED: BOLIVAR COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: HUNTER NOLAN AIKENS
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL

BY: BILLY L. GORE
DISTRICT ATTORNEY: LAURENCE Y. MELLEN

GRIFFIS, J., FOR THE COURT

VOTES: KING, C.J., LEE AND MYERS, P.JJ., BARNES, ISHEE, ROBERTS, AND MAXWELL, JJ., CONCUR. IRVING, J., DISSENTS WITHOUT SEPARATE WRITTEN OPINION

FACTS

On June 5, 2007, Officer Charles White of the Cleveland Police Department was on patrol in Cleveland, Mississippi, when he heard a sound he described as the tin roof coming off of a building. Then, he heard an alarm sound from the back of the Pickled Okra restaurant. He walked to the back of the building and saw Spearman attempting to cut the lock off of a walk-in cooler with bolt cutters. Spearman threw the bolt cutters over a fence and then crossed the fence and began walking away. Officer White arrested Spearman. Spearman was charged with the attempted burglary of a building. He proceeded to trial, and the jury found him guilty of the crime charged. Spearman was sentenced to five years in the custody of the MDOC, with two years to serve and three years suspended. His motion for a judgment notwithstanding the verdict (JNOV) or, in the alternative, a new trial was denied by the circuit court.

ISSUES

Spearman argues that: (1) he was denied his constitutional right to testify, and (2) his indictment was fatally defective because it failed to charge an essential element of the crime charged.

HOLDING

First, Spearman argued that he was denied his right to testify. Spearman argues that he wanted to take the stand to testify but was not allowed that opportunity. The state argues that this is merely an error in the record. Spearman says that on the record he stated that he wanted to testify. However, when the court went back on the record he did not testify and instead rested. In reviewing the record, the court found it clear that Spearman did not chose to testify. Further, Spearman did not raise this issue until appeal. The record as a whole indicates that Spearman did not wish to testify.

Finally, Spearman argues that his indictment was defective because it did not list all of the elements of the crime of attempted burglary. Specifically, the indictment listed the elements of burglary but not attempt. However, the court has held that failure to list attempt in an indictment is not fatal. Spearman knew that he was charged with the offense of attempt and this was not error.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO60721.pdf

March 9, 2010

NO. 2008-KA-01460-COA

BRIAN KEITH MARTIN APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - MANSLAUGHTER

SENTENCED TO TWENTY YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS

TRIAL JUDGE: HON. LAMAR PICKARD
COURT FROM WHICH APPEALED: COPIAH COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANT: PHILLIP BROADHEAD, LESLIE S. LEE
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: LAURA HOGAN TEDDER
DISTRICT ATTORNEY: ALEXANDER C. MARTIN

ISHEE, J., FOR THE COURT

VOTES: KING, C.J., LEE AND MYERS, P.JJ., IRVING, GRIFFIS, BARNES, ROBERTS AND MAXWELL, JJ., CONCUR

FACTS

Martin was a paraplegic who lived with his mother, Linda Martin. Also living with them was Welch, the boyfriend of Linda. Linda and Welch went out one night. When they returned they went to the bedroom and locked the door. The door was locked because Martin had been entering the room during the night. Martin testified that he thought he heard Welch talking about an intruder in the bedroom. He then picked the lock and entered the bedroom with a knife. Welch approached Martin and was stabbed in the neck. Martin was wearing gloves at the time and said he did not intend to stab Welch. Martin was convicted of manslaughter and sentenced to twenty years.

ISSUES

On appeal, Martin argues: I. Martin was entitled to a judgment of acquittal based on the *Weathersby* rule because the State did not present eyewitness testimony that contradicted his version of events. II. The State failed to present legally sufficient evidence that Martin acted without authority of law, and Martin's conviction is against the overwhelming weight of the evidence. III. Martin received ineffective assistance of counsel.

HOLDING

Martin first argues that he was entitled to acquittal because the state failed to present any witnesses against him who contradicted his version of events. The court found that this was not

accurate. The state actually presented Martin's mother who testified to witnessing the attack. She stated that Welch did not do anything to provoke the attack.

Next, the court examined the weight and sufficiency fo the evidence. The court examined the elements of the crime and the record and evidence presented. Accordingly, the court found the evidence to be sufficient. Further, the court held that allowing the verdict to stand did not sanction an unconscionable injustice.

Finally, Martin argued ineffective assistance of counsel. All of the elements of this issue can be determined from the record. Martin's ineffective assistance of counsel centers around the weight and sufficiency of the evidence. As these issues are without merit so is the claim of ineffective assistance. The conviction and sentence is affirmed.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO61405.pdf

NO. 2009-KA-00644-COA

LAMARCUS COLLINS A/K/A TWO PISTOLS APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - ARMED ROBBERY

SENTENCED TO TWENTY-FIVE YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS

TRIAL JUDGE: HON. C.E. MORGAN III
COURT FROM WHICH APPEALED: MONTGOMERY COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: ERIN ELIZABETH PRIDGEN
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: BILLY L. GORE
DISTRICT ATTORNEY: DOUG EVANS

ISHEE, J., FOR THE COURT

VOTES: LEE AND MYERS, P.JJ., IRVING, GRIFFIS, BARNES, ROBERTS AND MAXWELL, JJ., CONCUR. KING, C.J., CONCURS IN RESULT ONLY

FACTS

Branch was robbed of $50 at gunpoint at her home. The robber had his head covered but she recognized him as "two-pistols", a friend of the family. Police identified Collins as "two-pistols." Collins produced three alibi witness who said that he was playing cards with them at the time of the crime. Collins requested and was granted a motion in liminie to prohibit the use of his nickname

"two-pistols" in front of the jury. The court said that Collins could object when a witness was to testify about his name. However, prosecutors mentioned the nickname during opening statements before Collins could object. He requested a mistrial which was denied. Collins was convicted and sentenced to twenty-five years.

ISSUE

Collins argues that the court abused its discretion in denying his motion for mistrial.

HOLDING

The court held that a trial judge possesses the authority to declare a mistrial where there is prosecutorial misconduct. Here, the name was part of the evidence to be presented. This was how the victim knew the defendant. The name was also listed on the indictment. The mention of the name was not error. There is no merit to this issue.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO61391.pdf

NO. 2008-KA-01445-COA

KEIR D. SANDERS APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - ACQUITTED BY REASON OF INSANITY OF COUNT I, MURDER, AND ORDERED TO CONFINEMENT IN A STATE ASYLUM FOR THE INSANE, ORDER SUSPENDED, AND CONVICTION OF COUNT II, MURDER, AND SENTENCED AS A HABITUAL OFFENDER TO LIFE IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS TO RUN CONSECUTIVELY WITH THE ORDER IN COUNT I

TRIAL JUDGE: HON. THOMAS J. GARDNER III
COURT FROM WHICH APPEALED: TISHOMINGO COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: HUNTER NOLAN AIKENS
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: JEFFREY A. KLINGFUSS
DISTRICT ATTORNEY: JOHN RICHARD YOUNG

ROBERTS, J. FOR THE COURT

VOTES: LEE AND MYERS, P.JJ., IRVING, GRIFFIS AND MAXWELL, JJ., CONCUR. ISHEE, J., DISSENTS WITH SEPARATE WRITTEN OPINION JOINED BY KING, C.J., AND BARNES, J.

FACTS

Sanders shot and killed his grandparents. He stole their vehicle and fled to Memphis. He then disappeared for more than twenty years until he was arrested in Texas. He was brought back to Mississippi where he was indicted and convicted. Testifying on his behalf, several witnesses were able to describe a long and serious history of mental illness. The jury found that Sanders was not guilty by reason of insanity for the death of his grandfather, but was guilty of murder for the death of his grandmother. Sanders was sentenced to life for the murder and sentenced to the state mental hospital for the death of his grandfather.

ISSUES

Sanders appeals his conviction and sentence, presenting four issues on appeal: I. The verdict is against the overwhelming weight of the evidence, and it was error for the circuit court to deny Sanders's motion for a new trial. II. The circuit court erred in giving the State's jury instruction on flight when the defense presented an independent reason for Sanders's flight. III. The circuit court erred by admitting gruesome autopsy photographs of the victims into evidence. IV. The circuit court erred by requiring Sanders to serve the life sentence pursuant to Count II before being conveyed to the state mental hospital pursuant to Count I.

HOLDING

First, Sanders argues that the verdict was against the weight of the evidence. Primarily this argument centers on the mental condition of Sanders. There were experts on both sides of this issue. The court examined in detail the testimony of the witnesses at trial. The court noted that this was a classic "battle of the experts." However, in reviewing the testimony the court found that there was enough evidence that Sanders could function normally which would give jurors enough reason convict. Because of this testimony the court will not disturb the verdict.

Next, Sanders argued that the giving of a flight instruction was reversible error. Sanders argued that Dr McCoy and Webb both offered valid reasons for Sanders flight which would negate the instruction. However, the court held that the reasons offered by the experts were merely educated guesses as to why Sanders fled. Therefore, it was not improper to give the flight instruction.

Next, Sanders argued that the court erred in admitting gruesome autopsy photographs. However, case law supports the use of these photos. The admission of the photos and the use of a projector to show them is not an abuse of the trial court's discretion.

Finally, Sanders argues that it is error to require that he serve the life sentence before being sent to the mental hospital. The court looked at the interplay between the two statutes for which Sanders was sentenced. The court noted that this is an issue of first impression. The court held that the trial court properly exercised its discretion in requiring Sanders to first serve the life sentence. The conviction and sentence was affirmed.

ISHEE, J., DISSENTING

Ishee would find that allowing Sanders's conviction of murder to stand, based on the evidence, would sanction an unconscionable injustice. The evidence does not support the jury's verdict, as he would find that the State failed to prove Sanders's sanity beyond a reasonable doubt. The case at bar is such an example of a case in which the evidence preponderates heavily against the verdict.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO62264.pdf

March 16, 2010

NO. 2009-KA-00694-COA

REGINALD SHELTON APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - POSSESSION OF MORE THAN FIVE KILOGRAMS OF MARIJUANA

SENTENCED TO TWENTY-FIVE YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS WITH FIVE YEARS SUSPENDED AND FIVE YEARS OF POST RELEASE SUPERVISION

TRIAL JUDGE: HON. WILLIAM E. CHAPMAN III
COURT FROM WHICH APPEALED: MADISON COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: WM. ANDY SUMRALL
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: STEPHANIE BRELAND WOOD
DISTRICT ATTORNEY: MICHAEL GUEST

CONSOLIDATED WITH

NO. 2009-KA-00695-COA

CALVIN P. SHELTON APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

CRIMINAL - FELONY - POSSESSION OF MORE THAN FIVE KILOGRAMS OF MARIJUANA

SENTENCED TO TWENTY-FIVE YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS WITH FIVE YEARS SUSPENDED AND FIVE YEARS OF POST-RELEASE SUPERVISION

TRIAL JUDGE: HON. WILLIAM E. CHAPMAN III

COURT FROM WHICH APPEALED: MADISON COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: WM. ANDY SUMRALL
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: STEPHANIE BRELAND WOOD
DISTRICT ATTORNEY: MICHAEL GUEST

ROBERTS, J., FOR THE COURT

VOTES: KING, C.J., LEE AND MYERS, P.JJ., IRVING, GRIFFIS, BARNES, ISHEE AND MAXWELL, JJ., CONCUR

FACTS

The Sheltons were traveling through Madison County in a rental car when an officer observed that they were weaving along I-55. Officer Sanders pulled the vehicle over to make sure they were not intoxicated. The Sheltons appeared to be nervous during the stop. Calvin stated that they were driving home to Atlanta from a wedding in New Mexico. During a pat down search the officer felt a bulge which turned out to be over $2,600. The officer then questioned Reginald and his story was slightly different. He said they were returning from New Mexico but did not mention a wedding. Calvin refused to consent to a search of the vehicle. The officer brought out a drug dog and the dog alerted the officer to drugs in the trunk. The officer opened the trunk and found a duffle bag containing a large amount of marijuana. The Sheltons were indicted and convicted of possession of more than five kilos of marijuana and sentenced to twenty-five years in custody with five years suspended.

ISSUES

First, the Sheltons claim the circuit court erred when it denied their motions to suppress the evidence. Second, the Sheltons claim the circuit court erred when it allowed the prosecution to submit the evidence without a proper chain of custody. Third, the Sheltons claim the circuit court erred when it denied their proffered jury instruction on the constitutional prohibitions against unreasonable searches and seizures. Finally, the Sheltons claim that the verdict is contrary to the weight of the evidence.

HOLDING

First, the Sheltons argue that it was error to deny their motion to suppress. The standard of review for a denial of a motion to suppress is abuse of discretion. The search at issue here is known as a *Terry* stop. The test is whether the officer was reasonable in their search. The initial stop was for a proper reason concerning reckless driving. During the stop the officer observed erratic behavior. He then brought out his drug dog. The officer had an articulable reason for conducting the search. Even without a reason, a drug dog sniff is not an illegal search. Therefore, this issue is without merit.

Next, the Sheltons argued a problem with the chain of custody. The test is to determine if there was a break in the chain of custody. The proponent of the evidence must show no reasonable

inference of tampering. However, there is no requirement to produce every person who handles the evidence. The court did not abuse its discretion in allowing the evidence.

Next, the Sheltons claim that the trial court erred in denying their proffered jury instructions. They claim that the denial of the instructions amounted to depriving them of their right to present their theory of defense. Namely, the Sheltons claimed that they were subject to an illegal search and the evidence was planted. This was an effort to again put before the jury the issue of the illegality of the search which was already determined by the trial judge. The instructions were properly denied.

Finally, the Sheltons argued the weight of the evidence. The court reviewed the evidence and found no merit to this issue. The conviction and sentence was affirmed.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO61873.pdf

March 30, 2010

NO. 2009-KA-00179-COA

JOEL SISTRUNK APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - POSSESSION OF AT LEAST TWO, BUT LESS THAN TEN, DOSAGE UNITS OF HYDROCODONE

SENTENCED AS A HABITUAL OFFENDER TO EIGHT YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS AND TO PAY A $5,000 FINE

TRIAL JUDGE: HON. MICHAEL M. TAYLOR
COURT FROM WHICH APPEALED: WALTHALL COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: HUNTER NOLAN AIKENS
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: LAURA HOGAN TEDDER
DISTRICT ATTORNEY: DEE BATES

IRVING, J., FOR THE COURT

VOTES: KING, C.J., LEE AND MYERS, P.JJ., GRIFFIS, BARNES, ISHEE AND ROBERTS, JJ., CONCUR. MAXWELL, J., CONCURS IN PART AND IN THE RESULT

FACTS

Sistrunk was arrested and convicted of possession of hydrocodone after a traffic stop. Officers received a report of an impaired driver and waited until they saw a vehicle matching the description.

They followed the vehicle and saw it cross the center line. The vehicle was pulled over and Sistrunk was the driver. A pill bottle was spotted on the floor and Sistrunk gave consent to search. The bottle was opened and found to contain two dosage units of hydrocodone. Sistrunk was sentenced as an habitual offender to eight years in custody.

ISSUES

Sistrunk appeals and asserts (1) that the trial court erred in admitting a recorded statement that he made shortly after his arrest, (2) that his trial counsel was ineffective, (3) that the State committed a discovery violation, (4) that the evidence is insufficient to sustain the conviction against him, and (5) that the verdict is against the overwhelming weight of the evidence.

HOLDING

First, Sistrunk argues that it was error to admit his recorded statement into evidence because it was clear that he had been involved with illegal drugs for several years and he also mentions his incarceration. However, Sistrunk did not make an objection at trial. The statement was marked as an exhibit and was admitted into evidence even though the court granted Sistrunk's motion in liminie to prohibit mention of prior bad conduct. Sistrunk did not object prior to its admission. Further, Sistrunk's attorney urged the admission of the statement. Therefore, the admission of the statement was not error.

Next, the court examined ineffective assistance of counsel. Sistrunk argues that his attorney was ineffective because he did not object to the admission of the statement and he did not object to mentions of prior convictions during closing statements. However, because this issue could not be determined from the record, the court deferred ruling on this issue and left it for a PCR motion.

Next, the court examined whether Sistrunk was unfairly surprised by the state's failure to disclose that the forensic scientist would testify that Sistrunk possessed ten milligrams of hydrocodone. However, Sistrunk did not make a contemporaneous objection. Therefore, this issue is procedurally barred.

Finally, the court examined the weight and sufficiency of the evidence. After examining the evidence, the court held that sufficient evidence exists to support the conviction and that allowing the verdict to stand does not sanction an unconscionable injustice.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO62201.pdf

NO. 2009-KA-00325-COA

JAMAL ANTWAN PRITCHETT APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - ARMED ROBBERY

SENTENCED TO TEN YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS AND TO PAY A $500 FINE, $1000 TO THE VICTIMS' COMPENSATION FUND, AND RESTITUTION OF $207

TRIAL JUDGE: HON. ROBERT WALTER BAILEY
COURT FROM WHICH APPEALED: LAUDERDALE COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: BENJAMIN ALLEN SUBER
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: JEFFREY A. KLINGFUSS
DISTRICT ATTORNEY: BILBO MITCHELL

GRIFFIS, J., FOR THE COURT

VOTES: KING, C.J., LEE AND MYERS, P.JJ., BARNES, ISHEE, ROBERTS AND MAXWELL, JJ., CONCUR. IRVING, J., CONCURS IN PART AND IN THE RESULT

FACTS

Pritchett, Marsh and McNeil decided to rob a store. Pritchett's job was to enter the store and wave to the others when it was clear for them to enter. Pritchett is seen on video waving to the others just before they entered the store armed and masked. McNeil testified to each persons role in the robbery. Pritchett claims that he was not involved. He was convicted of robbery by use of a deadly weapon and sentenced to ten years.

ISSUES

Pritchett claims that the circuit court: (1) erred in allowing evidence regarding gang membership because the State did not lay a proper foundation to show a connection between gang membership and the crime and (2) erred in denying his motion for a new trial because the verdict is against overwhelming weight of the evidence.

HOLDING

First, Pritchett argues that the court erred in allowing evidence about his gang involvement. The court looked at the record and found a very minimal number of references to gang affiliation. The court found the references to be relevant to the testimony and probative of the issues. The admission of these statements is not an abuse of discretion.

Next, the court examined the weight of the evidence. The court examined the record and the evidence. There was video and testimony from an accomplice. The verdict was not against the weight of the evidence.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO61703.pdf

April 6, 2010

NO. 2009-KA-00414-COA

BILLY RAY ROBINSON APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CRIMINAL - FELONY - SALE OF COCAINE

SENTENCED TO TEN YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS

TRIAL JUDGE: HON. ROBERT G. EVANS
COURT FROM WHICH APPEALED: SIMPSON COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: JUSTIN TAYLOR COOK
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: CHARLES W. MARIS, JR.
DISTRICT ATTORNEY: EDDIE H. BOWEN

GRIFFIS, J., FOR THE COURT

VOTES: KING, C.J., LEE AND MYERS, P.JJ., IRVING, BARNES, ISHEE, ROBERTS AND MAXWELL, JJ., CONCUR

FACTS

James worked as a paid informant for the MBN. His vehicle was outfitted with audio and video surveillance and he was given marked bills in order to make drug purchases. Robinson approached the vehicle and sat in the passenger seat. James told Robinson that he wanted to purchase crack cocaine. Robinson gave directions to James as to where to drive. James drove to the location, gave money to Robinson, and Robinson exited the vehicle. A short time later Robinson returned and handed James a rock of crack cocaine. Testing confirmed that the item was cocaine. Robinson was arrested, indicted, and convicted. He was sentenced to ten years for sale of cocaine.

ISSUE

Robinson's appellate counsel filed a *Lindsey* brief stating that there are no arguable issues on which to appeal.

HOLDING

The court examined the record and agreed that there are no arguable issues for review. Counsel asked that Robinson be given additional time to file a pro se brief if he disagreed with the

decision of appellate counsel. At the time of the decision, no pro se brief had been received by the court. The conviction was affirmed.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO61988.pdf

COA POST-CONVICTION CASES

October 13, 2009

NO. 2008-CA-01446-COA

BRIAN YOUNG APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

MOTION FOR POST-CONVICTION RELIEF DENIED

TRIAL JUDGE: HON. ROBERT P. KREBS
COURT FROM WHICH APPEALED: JACKSON COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANT: ROBERT A. RATLIFF, JON ALLEN GREEN
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: W. GLENN WATTS

ROBERTS, J., FOR THE COURT

VOTES: KING, C.J., LEE AND MYERS, P.JJ., GRIFFIS, BARNES, ISHEE, CARLTON AND MAXWELL, JJ., CONCUR. IRVING, J., CONCURS IN PART AND IN THE RESULT WITHOUT SEPARATE WRITTEN OPINION

FACTS

Young was convicted of murder and sentenced to life in custody. His conviction was affirmed and he was granted leave to file a post-conviction motion.

ISSUES

On appeal, Young complains of a violation of his right to a speedy trial and ineffective assistance of counsel along with a denial of an evidentiary hearing on the PCR motion.

HOLDING

First, Young at length complains of a speedy trial violation. However, the court noted that Young raised this issue on his direct appeal and it was fully discussed in the appellate decision. Therefore, this issue is procedurally barred.

Next, Young complains of ineffective assistance of counsel. He argues that trial counsel did not properly prepare for trial and failed to call certain witnesses. The court held that the decision to call witnesses at trial was trial strategy and could find no error in that the witnesses were character witnesses and Young's character was not an issue. Young also complains that his counsel refused to allow Young to testify. However, Young offered no proof of this in his motion. Young also complained that his attorney failed to procure a blood splatter expert. The court read the affidavit of the expert and found that it did not support Young's theory and therefore it was not error for counsel to not procure the expert. Further, the court examined the actions of counsel at trial and found that he exercised judgement and discretion while advocating for the defendant. He also made objections and motions at proper times and was competent overall. Young also complained that his attorney failed to convey a plea offer to him. However, affidavits from the trial attorney and the prosecutor show that no offer was made. Young also complains that his attorney did not pursue a speedy trial claim and to analyze a letter sent to prosecutors. The court looked at these claims and found no error by trial counsel.

Finally, Young complains that the trial judge dismissed his PCR motion without an evidentiary hearing. The court held that the grant of a PCR motion does not entitle one to a hearing. Based on the evidence in this case, it was not error to deny a hearing.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO58543.pdf

NO. 2008-CP-01607-COA

RONALD MARTIN BAILEY A/K/A MARTY APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

MOTION FOR POST-CONVICTION RELIEF DISMISSED

TRIAL JUDGE: HON. LEE J. HOWARD
COURT FROM WHICH APPEALED: LOWNDES COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: RONALD MARTIN BAILEY (PRO SE)
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: LAURA HOGAN TEDDER

LEE, P.J., FOR THE COURT
VOTES: KING, C.J., MYERS, P.J., IRVING, GRIFFIS, BARNES, ISHEE, ROBERTS, CARLTON AND MAXWELL, JJ., CONCUR

FACTS

Bailey pled guilty to possession of hydrocodone and was sentenced to eight years in custody. He now files this PCR motion.

ISSUES

Bailey appeals the dismissal of his PCR motion, asserting the following issues: (1) he was subjected to double jeopardy; (2) his guilty plea was coerced; (3) he was subjected to an unlawful search and seizure; (4) he was denied the right to a speedy trial; (5) he should have received credit for his time served in federal prison; and (6) he received ineffective assistance of counsel.

HOLDING

First, Bailey complained of double jeopardy because the case against him was twice presented to the grand jury. Because he was not acquitted or convicted of an offense, double jeopardy does not apply.

Next, Bailey contends that his guilty plea was involuntary. In support of his argument, Bailey presented a signed statement of twenty inmates complaining of problems with air-conditioning. He says that any inmate would enter a plea to get out of that facility. Because there is no support in the record for this argument, this issue is without merit.

Bailey next complains that the evidence against him should have been suppressed because of an unlawful search and seizure. Bailey waived this issue when he pled guilty and therefore this issue is without merit.

Bailey also complains of a speedy trial violation. This issue is also waived by a guilty plea. Further, the court found that much of the delay in getting Bailey to trial was because he was incarcerated in another state and had to be extradited. Therefore, this issue is also without merit.

Next, Bailey argues that he should receive credit for time served in federal prison while awaiting trial. Because he was serving time for another crime, Bailey is not entitled to credit for time served.

Finally, Bailey complains of ineffective assistance of counsel. However, he cites no specific instances of ineffective conduct by his attorney. Further, the court noted that Bailey was sentenced to less than the maximum for the crime and four counts were retired to the files. There is no merit to this issue.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO58706.pdf

November 3, 2009

NO. 2007-CA-01292-COA

DAVID MARTIN ROBERT APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CIVIL - POST-CONVICTION RELIEF
MOTION FOR POST-CONVICTION RELIEF DENIED

TRIAL JUDGE: HON. LESTER F. WILLIAMSON, JR.
COURT FROM WHICH APPEALED: KEMPER COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: J. STEWART PARRISH
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: LAURA HOGAN TEDDER

BARNES, J., FOR THE COURT

VOTES: KING, C.J., LEE AND MYERS, P.JJ., GRIFFIS, ISHEE, CARLTON AND MAXWELL, JJ., CONCUR. IRVING, J., CONCURS IN RESULT ONLY. ROBERTS, J., NOT PARTICIPATING

FACTS

Robert was convicted of depraved heart murder and sentenced to life. He lost his direct appeal. The Supreme Court granted his application for leave to seek post-conviction relief on the sole issue of ineffective assistance of counsel. An evidentiary hearing was held in the trial court and in a fifty-two page opinion the PCR motion was denied.

ISSUE

The sole issue on appeal was ineffective assistance of counsel.

HOLDING

Robert's trial attorney filed an affidavit listing numerous instances wherein he found his representation of Robert ineffective. The court then examined the allegations using the familiar standards set forth in *Strickland v. Washington*. There is a presumption that the attorney's performance is competent and the defendant must show that there is a reasonable probability that, but for the errors, the result of the proceeding would have been different. Robert raised three areas where his attorney was deficient.

First, Robert argues that his attorney was deficient in failing to subpoena, call or examine witnesses. He argues that a continuance should have been requested to locate witness Cedric Boyd. In fact, a subpoena was issued for Boyd but it was not served because Boyd was serving overseas in the military. However, Robert did not meet his burden of explaining how calling Boyd would have changed the outcome of the trial. He also complained that Boyd's mother was not thoroughly examined. Again, he failed to meet his burden. Robert also argues that his attorney's cross-examination of a state witness was deficient. However, the court reviewed the examination and found it to be sufficient. A more detailed cross-examination would not change the outcome of the trial.

Next, Robert argues that his attorney was deficient because he did not send bullets and casings to the crime lab for comparisons. He also argues that it was improper for Dr. Steven Hayne to testify about ballistics. He argues cumulative error in the ballistics argument. The court disagreed and held that these contentions taken individually or cumulatively would not have changed the trial outcome.

Finally, Robert argues that his attorney was not properly prepared and had not investigated his case. Robert claims that his attorney did not question him about the circumstances of the case or interview witnesses. However, the court found the attorney to be prepared as he interviewed numerous witnesses, took pages of pre-trial notes, visited the scene, researched the issues, issued subpoenas and met with the client. Further, there is no evidence that Robert was dissatisfied with the actions of his attorney until the filing of this motion. Based upon all of this the court could not say the trial judge erred in finding that the attorney's alleged deficiencies affected the outcome of the trial. The PCR motion was properly denied.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO58820.pdf

NO. 2008-CA-00948-COA

CHRISTOPHER WADE ELLIOTT APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CIVIL - POST-CONVICTION RELIEF
MOTION FOR POST-CONVICTION RELIEF DISMISSED

TRIAL JUDGE: HON. R.I. PRICHARD III
COURT FROM WHICH APPEALED: MARION COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: A. RANDALL HARRIS
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: BILLY L. GORE

BARNES, J., FOR THE COURT

VOTES: KING, C.J., LEE AND MYERS, P.JJ., IRVING, ISHEE, CARLTON AND MAXWELL, JJ., CONCUR. ROBERTS, J., SPECIALLY CONCURS WITH SEPARATE WRITTEN OPINION JOINED BY LEE, P.J., AND GRIFFIS, J.

FACTS

In August of 2004, Elliott pled guilty to sexual battery. The incident that led to his conviction began when Elliott and the victim he had known since high school smoked marijuana and did methamphetamine. She invited him into her home and engaged him in oral sex. During the sexual act, the victim bit Elliott's penis which caused him extreme pain. Elliott claims to have hit her in self-defense. She was treated at a hospital for minor injuries. Elliott eventually pled guilty to the charges.

He filed this PCR motion which was denied. There was a question of jurisdiction in the timing of the filing of the motion. The court suspended the filing requirements under the unique circumstances of this case and heard the appeal on the merits.

ISSUES

Elliott argues that his guilty plea was not voluntary and knowing, that his attorney was ineffective, and that he was improperly denied an evidentiary hearing.

HOLDING

First, Elliott argues that his plea was not voluntary as he was "induced by deception" to plead guilty and that he was under the influence of pain medications and did not understand what he was doing. The court then reviewed a transcript of the plea hearing and determined that Elliott understood that he pled guilty because his version of the facts were not credible and that a jury would more likely believe the victim. Regarding the pain medication, Elliott was questioned on the record about this. The judge was convinced that Elliott was not impaired. Elliott also argues that he was not aware that he would be required to register as a sex offender. This issue is controlled by the recent *Magyar* decision. The statute requiring the court to notify a defendant of the registration requirements has been held to be invalid.

Next, the court examined the ineffective assistance of counsel argument. Again, the court looked at the transcript of the proceedings and determined that Elliott stated under oath that he had met with his attorney and thoroughly discussed the issues. Further, Elliott stated that he was "fully satisfied" with counsel.

Finally, the court examined whether Elliott was entitled to an evidentiary hearing. The trial court has wide discretion in the grant of a hearing and the trial court did not abuse that discretion in this case.

ROBERTS, J., SPECIALLY CONCURRING

Roberts wrote separately to discuss an *Alford* plea. Roberts states "When an accused seeks to plead guilty but maintains he is factually innocent, the trial judge must be on high alert. Prior to acceptance of such a guilty plea, the record must be populated with evidence indicating both strong proof of actual guilt and a rational basis for the conclusion that acceptance of such a plea is truly in the accused's "best interest." Only then does the guilty plea qualify as voluntary and intelligent, thereby meeting the constitutional standards expressed in *Alford*."

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO59004.pdf

NO. 2008-CA-01750-COA

RONNIE MITCHENER APPELLANT
v.

STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CIVIL - POST-CONVICTION RELIEF
MOTION FOR POST-CONVICTION RELIEF DENIED

TRIAL JUDGE: HON. JAMES T. KITCHENS, JR.
COURT FROM WHICH APPEALED: LOWNDES COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: STEPHEN L. BEACH
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: DEIRDRE MCCRORY

MYERS, P.J., FOR THE COURT

VOTES: KING, C.J., LEE, P.J., IRVING, GRIFFIS, BARNES, ISHEE, ROBERTS, CARLTON AND MAXWELL, JJ., CONCUR

FACTS

Mitchener pled guilty to kidnaping. His conviction was affirmed. He filed a PCR motion which was dismissed by the circuit court. That decision was reversed and the matter was sent back for an evidentiary hearing. Mitchener argued that his attorney told him that if he pled guilty then he would be sentenced to time served and probation. Mitchener provided several witnesses who stated that they heard the attorney make these promises. The state presented the attorney and his assistant who each denied Mitchener's claims. After the hearing, the trial court denied the PCR motion. This appeal was filed.

ISSUES

Mitchener complained of ineffective assistance of counsel and that his plea was involuntary.

HOLDING

Mitchener first complains of ineffective assistance of counsel. He says his attorney was ineffective in not preserving a transcript for appeal. This issue is barred by res judicata and is barred as being raised for the first time on appeal. Mitchener also fails to show how this error prejudiced him.

Next, Mitchener complains that his attorney misrepresented the sentence that he would receive. This issue is without merit as he is asking the court to re-weigh the credibility of the witnesses. The trial court in a detailed opinion rejected Mitchener's witnesses.

Finally, Mitchener argues that his plea was not voluntary as his sentence was misrepresented by his attorney. This is the same issue raised above and is again without merit.

To View the Full Opinion Click Below:

http://www.mssc.state.ms.us/Images/Opinions/CO58769.pdf

NO. 2008-CP-00584-COA

JEROME WHITAKER APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CIVIL - POST-CONVICTION RELIEF
AFFIRMED IN PART AND REVERSED AND REMANDED IN PART

TRIAL JUDGE: HON. ANDREW K. HOWORTH
COURT FROM WHICH APPEALED: MARSHALL COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: JEROME WHITAKER (PRO SE)
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: JEFFREY A. KLINGFUSS

KING, C.J., FOR THE COURT

VOTES: LEE AND MYERS, P.JJ., IRVING, GRIFFIS, BARNES, ISHEE, ROBERTS, CARLTON AND MAXWELL, JJ., CONCUR

FACTS

Whitaker pled guilty of failure to register as a sex offender and was sentenced to a five year suspended sentence. Whitaker violated the terms of his probation and a revocation hearing was held. His probation officer testified that he had tested positive for drugs, been arrested for numerous assaults, disorderly conduct, public intoxication, failure to report, failure to pay fees, living with a brother who was a felon, and maintaining a residence in Tennessee without authorization. The judge revoked the probation and imposed the sentence.

ISSUES

Whitaker, argued that the court illegally revoked his probation, the sentence exceeded his original sentence, that he should have been appointed counsel for the revocation hearing, and that he received ineffective assistance of counsel.

HOLDING

First, the court examined whether the probation was illegally revoked. Whitaker argues that his revocation was based on a positive urine test and nothing more. However, the court noted the testimony of the probation officer and the testimony of Whitaker who admitted to using marijuana. The evidence was sufficient to affirm the decision to revoke.

Next, the court looked at the sentence imposed. The court noted that the sentence imposed did indeed exceed the maximum allowed. The state admitted this error but said it was a clerical error. The court remanded the matter to correct the clerical error.

Next, the court examined whether Whitaker should have been appointed counsel for the revocation. However, because Whitaker failed to raise this issue below it is barred.

Finally, the court examined the ineffective assistance of counsel issue. He claims his attorney failed to notify the court that he had in fact registered as a sex offender. However, the court noted that only one offense is needed to revoke, and the court found several other violations. Therefore, this issue is without merit.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO59274.pdf

NO. 2008-CA-00914-COA

RODGER DALE JORDAN APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CIVIL - POST-CONVICTION RELIEF
PETITION FOR POST-CONVICTION RELIEF DENIED

TRIAL JUDGE: HON. THOMAS J. GARDNER III
COURT FROM WHICH APPEALED: PONTOTOC COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: WILLIAM WAYNE HOUSLEY
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: W. GLENN WATTS

KING, C.J., FOR THE COURT

VOTES: LEE AND MYERS, P.JJ., IRVING, GRIFFIS, BARNES, ISHEE, ROBERTS, CARLTON AND MAXWELL, JJ., CONCUR

FACTS

Jordan was arrested for statutory rape of a child. The victim was thirteen years old and made several statements to her sister. A hearing was held and the trial court ruled that the victims statements were admissible. Jordan pled guilty and was sentenced to thirty years with fifteen suspended.

ISSUES

Jordan argues that his plea was involuntary, he received ineffective assistance of counsel, and material evidence was not presented to the trial court.

HOLDING

First, the court examined the issue of ineffective assistance of counsel. Jordan presented affidavits that defense counsel told Jordan to enter a guilty plea because of the physical appearance and because he was not prepared for trial. Jordan presented no evidence of counsel's unpreparedness and thus did not meet his burden. Further, during his plea, Jordan testified that he was satisfied with his attorney's conduct.

Next, the court examined the voluntariness of the plea. He claims that his attorney coerced and manipulated him into pleading guilty. The court examined the colloquy and determined that Jordan understood his plea and even if he was misled by counsel, he understood that he was waiving the right to appeal on this issue.

Finally, the court examined whether evidence was revealed that would require the vacation of the plea. The new evidence was the existence of two witnesses who had also had sex with the victim. However, even assuming this new evidence is accurate, this does not negate the fact that Jordan also had sexual relations with the victim. Therefore this issue is without merit.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO59270.pdf

November 10, 2009

NO. 2008-CP-01088-COA

WILLIE RUDOLPH SMITH APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CIVIL - POST-CONVICTION RELIEF
PETITIONS FOR POST-CONVICTION RELIEF DENIED

TRIAL JUDGE: HON. ROGER T. CLARK
COURT FROM WHICH APPEALED: HARRISON COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: WILLIE RUDOLPH SMITH (PRO SE)
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: JEFFREY A. KLINGFUSS

MAXWELL, J., FOR THE COURT
VOTES: KING, C.J., LEE AND MYERS, P.JJ., IRVING, GRIFFIS, BARNES, ISHEE, ROBERTS AND CARLTON, JJ., CONCUR

FACTS

In August 1999, Smith pleaded guilty to transfer of a controlled substance. In October of 1999, he filed his first PCR motion. The Circuit Court neglected to rule on this motion. In December of 2007, Smith filed a second PCR motion alleging the same issues as in the first motion. The trial court considered both motions on the same date in 2008. The first motion was denied on the merits and the second motion was denied as time-barred.

ISSUES

On appeal, Smith argues that his indictment was defective, the guilty plea was obtained through the use of threats and coercion, and his sentence exceeds the maximum authorized by law.

HOLDING

First, the court addressed the issue of the indictment. Smith complains that the indictment was amended after his guilty plea to reflect his habitual status. The court held that this is not improper. Smith also complained of clerical errors in the indictment. The court held that as long as the defendant is on notice of the charges against him, clerical errors are deemed harmless.

Next, Smith complains that his guilty plea was coerced because he was unaware that he was to be charged as a habitual offender. However, the record does not reflect this fact. Smith was on notice several weeks prior to his plea that the state would seek habitual offender status when he was given notice of the amendment.

Finally, the court addressed the argument of an illegal sentence. Smith complains that the sentence was illegal because he was sentenced as an habitual offender. This issue was addressed above and was found to be without merit.

Lastly, the court addressed the second PCR motion. The court found this motion to be time-barred and it did not fall within one of the statutory exceptions. Therefore, the first motion was properly denied on the merits and the second motion was denied as time-barred.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO58957.pdf

NO. 2009-CP-00227-COA

MARICUS IVY APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CIVIL - POST-CONVICTION RELIEF
MOTION FOR POST-CONVICTION RELIEF DENIED

TRIAL JUDGE: HON. PAUL S. FUNDERBURK

COURT FROM WHICH APPEALED: LEE COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: MARICUS IVY (PRO SE)
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: LISA LYNN BLOUNT

CARLTON, J., FOR THE COURT
VOTES: KING, C.J., LEE AND MYERS, P.JJ., GRIFFIS, BARNES, ISHEE, ROBERTS AND MAXWELL, JJ., CONCUR. IRVING, J., CONCURS IN PART AND THE RESULT

FACTS

Ivy pled guilty to two counts of sexual battery. He was sentenced to thirty years in custody with fifteen suspended. He filed this PCR motion asking the court to reverse the sentence.

ISSUES

Ivy argues that the indictment was defective, there was no basis for the court to accept his plea, and he received ineffective assistance of counsel.

HOLDING

Ivy first argues that his indictment was defective because it did not list the statute that he was accused of violating. The court held that a guilty plea waives all non-jurisdictional flaws. The failure to cite a statute is non-jurisdictional and merely technical and therefore this argument was waived by the guilty plea.

Next, Ivy argues that the court erred in not requiring a factual basis for the guilty plea. The court reviewed the record in this case and found that Ivy testified at the hearing and stated that he committed two acts of sexual battery. Further, he stated that he understood that by pleading guilty he waived the requirement that the state prove a case against him. Therefore, the issue is without merit.

Finally, Ivy argues that he received ineffective assistance of counsel. Again, the court reviewed the transcript and noted that Ivy stated that he was satisfied with the performance of his attorney and that the attorney carefully explained the charges to him and had properly advised him. The record contains no proof that the performance of the attorney was deficient. This issue is also without merit. The denial of the PCR motion was proper.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO58767.pdf

NO. 2008-CA-01341-COA

JULIUS WESLEY KIKER APPELLANT
v.

STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CIVIL - POST-CONVICTION RELIEF
MOTION FOR POST-CONVICTION RELIEF DENIED

TRIAL JUDGE: HON. ROBERT P. KREBS
COURT FROM WHICH APPEALED: GEORGE COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: PERCY STANFIELD
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: LAURA HOGAN TEDDER

ISHEE, J., FOR THE COURT
VOTES: KING, C.J., LEE AND MYERS, P.JJ., GRIFFIS, BARNES, ROBERTS, CARLTON AND MAXWELL, JJ., CONCUR. IRVING, J., CONCURS IN PART AND IN THE RESULT WITHOUT SEPARATE WRITTEN OPINION

FACTS

Kiker was indicted and convicted for the murder of his wife. The conviction was upheld on appeal. He now files this PCR motion arguing that his sixth amendment right to counsel was violated because his trial attorney also represented a witness against him. Barnett was one of two attorneys representing Kiker. Barnett also represented Crawford who was under indictment for unrelated charges. Kiker complains that this conflict affected his trial.

ISSUE

The sole issue was whether Kiker received competent representation from a conflict free attorney.

HOLDING

Kiker argues that the court abused its discretion in denying his motion for PCR relief on the issue of his attorney's conflict. The court noticed that Kiker did indeed have an attorney who had a potential conflict. However, Kiker's other attorney had no such conflicts. The court examined each of Kiker's allegations and found that they did not rise to the level of being reversible. They held that Kiker did have a conflict free competent attorney. The possibility of conflict is insufficient to impugn a criminal conviction. All cases cited by Kiker involved a single attorney with a conflict and not within the facts of this case where Kiker had two attorneys. The court held that Barnett did not play a major role in the case and did not examine the witness in question. Despite Barnett's conflict of interest, the situation was remedied by Hurt's representation of Kiker and his handling of the vast majority of the trial, including the questioning of Crawford. Kiker has failed to show any actual conflict or prejudice to his case that persisted despite Hurt's representation. Throughout his trial, Kiker was competently represented by conflict-free counsel. The motion for PCR relief was properly denied.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO58696.pdf

November 17, 2009

NO. 2008-CP-01885-COA

WILLIAM HENRY WHITE A/K/A WILLIAM WHITE, JR. APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CIVIL - POST-CONVICTION RELIEF
MOTION FOR POST-CONVICTION COLLATERAL RELIEF DENIED

TRIAL JUDGE: HON. LILLIE BLACKMON SANDERS
COURT FROM WHICH APPEALED: WILKINSON COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: WILLIAM HENRY WHITE (PRO SE)
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: BILLY L. GORE

GRIFFIS, J., FOR THE COURT
VOTES: KING, C.J., LEE AND MYERS, P.JJ., IRVING, ISHEE, ROBERTS, CARLTON AND MAXWELL, JJ., CONCUR. BARNES, J., CONCURS IN PART AND IN THE RESULT

FACTS

White pled guilty to burglary of a dwelling. He was aided by an attorney throughout the hearing. He was advised of the rights he waived by pleading guilty. He was then sentenced to ten years in custody and was then seated in the courtroom awaiting transportation back to jail. While White was in the courtroom, the court attended to other matters before the court. However, White began to disrupt the other pleadings with loud comments. The court warned White to be quiet but White persisted. The court then cautioned White that if he made another outburst he would be re-sentenced to the full twenty-five years he faced for his plea. White continued to interrupt the court and said he did not care if he was sentenced to ten or twenty-five years. The court followed through on the threats and sentenced him to twenty-five years. White has now filed this PCR motion.

ISSUES

White argues that he was improperly re-sentenced after his original sentence, that the court failed to conduct a hearing prior to re-sentencing, and that he received ineffective assistance of counsel.

HOLDING

First, the court held that the argument about being improperly sentenced was procedurally barred as it was raised for the first time on appeal. Notwithstanding the bar, the issue is also without merit as the court was exercising its inherent authority to alter a sentence until the term of court expires.

Next, White argued that the court failed to conduct a hearing prior to re-sentencing. Again this issue was procedurally barred. Notwithstanding the bar, the issue was without merit as White was being sentenced for the crime to which he pled guilty. This was within the authority of the court.

Finally, White argues ineffective assistance of counsel. He argues that his attorney did nothing while the court re-sentenced him. White has failed to prove any deficiency on the part of his counsel. His only claim is that his counsel did nothing while the circuit court changed his sentence. However, as discussed above, this alteration of his sentence was within the inherent power of the circuit court. Because White fails to prove the first prong of the *Strickland* test, his claim for ineffective assistance must fail. Therefore, this issue has no merit.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO59164.pdf

NO. 2008-CP-01149-COA

RICHARD K. DICKERSON APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CIVIL - POST-CONVICTION RELIEF
MOTION FOR POST-CONVICTION RELIEF DENIED

TRIAL JUDGE: HON. JOSEPH H. LOPER JR.
COURT FROM WHICH APPEALED: GRENADA COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: RICHARD K. DICKERSON (PRO SE)
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: LISA LYNN BLOUNT

IRVING, J., FOR THE COURT
VOTES: KING, C.J., LEE AND MYERS, P.JJ., GRIFFIS, BARNES, ISHEE, ROBERTS, CARLTON AND MAXWELL, JJ., CONCUR

FACTS

Dickerson pleaded guilty to aggravated assault and armed robbery. He was sentenced to nineteen years and 350 days in custody with nineteen years suspended. He was placed on post-release supervision and violated the terms of his release. His probation was revoked and he was sentenced to serve the remaining nineteen years. He now files this PCR motion which was denied by the trial court.

ISSUES

Dickerson argues that he received ineffective assistance of counsel, his sentence is illegal, his plea was involuntary, and his request for an evidentiary hearing should have been granted.

HOLDING

First, the court reviewed the plea hearing and determined that Dickerson voluntarily entered his plea. He was fully advised of his rights and knowingly waived them. The court refused to address the issue of a competency hearing as this was raised for the first time on appeal. As for his mental state, Dickerson failed to notify the court of any mental problems. When asked, he specifically stated that he did not suffer from any mental problems.

Next, Dickerson complains that his attorney failed to advise him of the maximum and minimum sentences he faced. However, the record clearly shows that Dickerson was fully informed of the possible sentences.

As for ineffective assistance of counsel, Dickerson only attaches his affidavit in support of his argument. Where this is the only evidence presented, it is insufficient to support a claim.

Next, Dickerson argues that his sentence was illegal because he was released on post release supervision the day he was sentenced. The court noted that there is nothing improper with this.

Finally, Dickerson complains that the court erred in not granting him an evidentiary hearing and he was not informed that he waived this right. However, the record clearly contradicts this assertion. This issue is also without merit and the PCR motion was properly denied.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO59503.pdf

NO. 2008-CA-01243-COA

RAMONZ PAYNE APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CIVIL - POST-CONVICTION RELIEF
MOTION FOR POST-CONVICTION RELIEF DENIED

TRIAL JUDGE: HON. LESTER F. WILLIAMSON, JR.
COURT FROM WHICH APPEALED: LAUDERDALE COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: WANDA TURNER-LEE ABIOTO
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: DEIRDRE MCCRORY

LEE, P.J., FOR THE COURT
VOTES: KING, C.J., MYERS, P.J., IRVING, GRIFFIS, BARNES, ISHEE, CARLTONAND MAXWELL, JJ., CONCUR. ROBERTS, J., NOT PARTICIPATING

FACTS

Payne pleaded guilty to selling cocaine and was sentenced to thirty years with twenty-eight suspended upon completion of five years supervised probation. During the probationary period Payne possessed cocaine and agreed to an order revoking his probation. He was sentenced to twenty five years with one year to serve and another five year probationary period. Again during probation Payne was indicted for selling cocaine within 1500 feet of a church. Payne was ordered to serve the remaining twenty four year sentence and the sale of cocaine case was dismissed. Payne filed this PCR motion.

ISSUES

On appeal, the court consolidated Payne's issues to whether the trial court properly reviewed the evidence, whether he was denied the protections afforded by order of revocation, and whether the trial court erred in allowing a lab report without the testimony of a lab technician.

HOLDING

First, the court found no merit to the issue of the trial court's review of the evidence. The trial judge stated that he made a full examination of the petition, files etc. Therefore, there was no merit to this.

Next, The court examined the revocation order. He complains that his probation was revoked without a conviction. The court held that it is not necessary to obtain a conviction in order to revoke probation. There is no merit to this issue.

Finally, Payne complains that the state was not required to present a lab technician in order to introduce a lab report. However, Payne did not raise this issue before the trial court and it is therefore waived.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO59330.pdf

November 24, 2009

NO. 2008-CP-01448-COA

RODERICK HOOKS A/K/A RODERICK D. HOOKS APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CIVIL - POST-CONVICTION RELIEF
DENIED MOTION FOR POST-CONVICTION RELIEF

TRIAL JUDGE: HON. DAVID H. STRONG JR.
COURT FROM WHICH APPEALED: LINCOLN COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: RODERICK HOOKS (PRO SE)
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: BILLY L. GORE

IRVING, J., FOR THE COURT
VOTES: KING, C.J., LEE AND MYERS, P.JJ., GRIFFIS, BARNES, ISHEE, ROBERTS, CARLTON AND MAXWELL, JJ., CONCUR

FACTS

Hooks pled guilty to the crime of statutory rape. He was sentenced to fifteen years with eight to serve and seven on probation. Shortly thereafter, Hooks filed a motion to reduce his sentence which was construed as a PCR motion which was summarily denied. About two years later, Hooks filed a PCR motion which was denied. Hooks claimed newly discovered evidence in the form of affidavits from the victim and her mother saying that both had misstated the victim's age. The court denied the first PCR motion and held that the second was barred as a successive writ.

ISSUES

Hooks argues that his motion was dismissed even though he had newly discovered evidence and that his plea was involuntary and he received ineffective assistance of counsel.

HOLDING

The court held that the trial judge was correct in finding that the two affidavits did not constitute newly discovered evidence. Further, the second motion filed by Hooks was a successive writ. Even if the second motion was not barred, it was properly denied because it was based on Hooks mistaken notion that having sex with a minor is permissible if the child misled him about her age. Therefore, the decision to deny the PCR motions was proper.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO59263.pdf

December 8, 2009

NO. 2009-CP-00630-COA

THOMAS J. AMERSON APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CIVIL - POST-CONVICTION RELIEF
MOTION FOR POST-CONVICTION RELIEF DISMISSED

TRIAL JUDGE: HON. LESTER F. WILLIAMSON JR.
COURT FROM WHICH APPEALED: LAUDERDALE COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT: THOMAS J. AMERSON (PRO SE)
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: LISA LYNN BLOUNT

IRVING, J., FOR THE COURT
VOTES: KING, C.J., LEE AND MYERS, P.JJ., GRIFFIS, BARNES, ISHEE, CARLTON AND MAXWELL, JJ., CONCUR. ROBERTS, J., NOT PARTICIPATING

FACTS

Amerson was convicted of arson and his conviction was affirmed by the Supreme Court. Amerson sought permission to seek post-conviction relief. That permission was denied. Nevertheless, Amerson filed a PCR motion in the circuit court which was denied for lack of jurisdiction.

ISSUE

The sole issue on appeal was whether the circuit court had jurisdiction to hear the PCR motion.

HOLDING

The court held that because Amerson did not have permission to file the PCR motion, that the court lacked jurisdiction to hear the claim. The motion was properly dismissed.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO59953.pdf

January 5, 2010

NO. 2008-CP-01017-COA

MICHAEL W. SCOTT APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CIVIL - POST-CONVICTION RELIEF
MOTION FOR POST-CONVICTION RELIEF DENIED

TRIAL JUDGE: HON. ROBERT P. KREBS
COURT FROM WHICH APPEALED: JACKSON COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: MICHAEL W. SCOTT (PRO SE)
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: JOHN R. HENRY, JR.

DISPOSITION: REVERSED AND REMANDED - 01/05/2010

CARLTON, J., FOR THE COURT

VOTES: KING, C.J., LEE, P.J., IRVING, BARNES, ISHEE, ROBERTS AND MAXWELL, JJ., CONCUR. MYERS, P.J., AND GRIFFIS, J., DISSENT WITHOUT SEPARATE WRITTEN OPINION

FACTS

In 2005, Scott pled guilty to felony malicious mischief, his adjudication of guilt was deferred, and he was placed on five years probation. In 2007, Scott was charged with DUI refusal and leaving the scene of an accident. A trial was held and Scott's probation was revoked on the grounds that he violated the conditions of his probation. Scott filed a PCR motion alleging that the trial court erred in revoking probation merely because of the arrest. The trial court denied the motion.

ISSUE

Scott argues that it was error to deny his PCR motion without an evidentiary hearing.

HOLDING

The court held that Scott's argument that the trial court revoked his probation based solely on his arrest lacks evidentiary support. Scott asserts that he was acquitted of the charges of DUI refusal and leaving the scene of the accident in municipal court in Moss Point. He attached to his brief two documents that purport to be orders of acquittal. However, the orders do not appear in the official record. Further, the order of revocation fails to state that the court found Scott in violation of a condition of probation, only that he was arrested. A conviction is not necessary for revocation of probation, only a showing that it more likely than not that the defendant violated a condition of probation. Because the record is insufficient to determine if Scott violated a condition of probation, the judgment of the circuit court is reversed and remanded for an evidentiary hearing.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO59550.pdf

NO. 2008-CP-01705-COA

WILLIE CHERRY, JR. APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CIVIL - POST- CONVICTION RELIEF

MOTION FOR POST-CONVICTION COLLATERAL RELIEF DENIED

TRIAL JUDGE: HON. KENNETH L. THOMAS
COURT FROM WHICH APPEALED: BOLIVAR COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: WILLIE CHERRY, JR. (PRO SE)
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: LADONNA C. HOLLAND

GRIFFIS, J., FOR THE COURT

VOTES: KING, C.J., LEE AND MYERS, P.JJ., IRVING, BARNES, ISHEE, ROBERTS, CARLTON AND MAXWELL, JJ., CONCUR

FACTS

Cherry was indicted for armed robbery and pled guilty. He was sentenced to eight years in custody. He has filed this PCR motion which was denied without a hearing.

ISSUES

Cherry claims that: (1) he received ineffective assistance of counsel; (2) there was no factual bases for his guilty plea; (3) his guilty pleas were not knowingly and voluntarily entered into; (4) the circuit court was required to inform him of his right of appeal; (5) his sentence was excessive; (6) the prosecution withheld information; and (7) the circuit court erred when it denied his motion for post-conviction discovery.

HOLDING

First, the court examined the issue of ineffective assistance of counsel. Cherry offers only his statements to support his claim. His PCR claims are in direct conflict with his sworn testimony during his plea hearing. Cherry has failed to show that but for counsel's alleged errors the result would have been different.

Next, Cherry complains that there was no factual basis for his guilty plea. Here, the indictment was specific to the crime charged. After reading the indictment, the court asked Cherry if he committed the crime charged and he answered "yes." There was a sufficient factual basis for the plea.

Next, the court examined the voluntariness of the plea. Cherry argues that no one explained to him what constitutes a deadly weapon. Specifically, Cherry argues that a BB gun is not a deadly weapon. The Supreme Court has previously ruled that an inoperable pellet gun is a deadly weapon because it could be used as a club. The court held that as a matter of law the BB gun is also a deadly weapon.

Next, Cherry complains that the court failed to advise him of his right to appeal. However, a trial court is not required to inform a defendant of his right to appeal.

Next, Cherry argues that his sentence is excessive. The court reviewed the sentence and found that it did not exceed the maximum term allowed by statute and therefore was not excessive.

Next, Cherry argues prosecutorial misconduct. He argues that had prosecutors shown the BB gun to the grand jury he would not have been indicted for armed robbery. Cherry failed to show how the verdict would have been different had the weapon been shown to the grand jury. Thus he has failed to show prosecutorial misconduct.

Finally, Cherry argues that he was denied post-conviction discovery. A prisoner who has filed a proper PCR motion is entitled to discovery if motion withstands summary dismissal. Here, the motion did not survive and Cherry was not entitled to discovery. All issues are without merit and the denial of the PCR motion is affirmed.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO59980.pdf

NO. 2008-CA-01962-COA

TERRANCE CHANDLER APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CIVIL - POST-CONVICTION RELIEF
MOTION FOR POST-CONVICTION RELIEF DENIED

TRIAL JUDGE: HON. JAMES T. KITCHENS, JR.
COURT FROM WHICH APPEALED: OKTIBBEHA COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: IMHOTEP ALKEBU-LAN
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: BILLY L. GORE

MYERS, P.J., FOR THE COURT

VOTES: KING, C.J., LEE, P.J., IRVING, GRIFFIS, BARNES, ISHEE, ROBERTS, CARLTON AND MAXWELL, JJ., CONCUR

FACTS

Chandler pled guilty to possession with intent to sell near a church. He agreed to an open plea. After a pre-sentence report showed that Chandler had no prior felonies, the court had a sentencing hearing. During the hearing, the court noted that Chandler would only serve 25% of any sentence handed down. After making that statement, the court sentenced Chandler to 30 years.

Chandler filed this PCR motion asking that his sentence accurately reflect what the trial judge intended in the sentence. Chandler claimed that the trial judge intended for Chandler to serve seven and one half years. A hearing was held and the trial judge stated that he did not intend to sentence Chandler to seven and one half years because this was the largest possession case ever in Oktibbeha County. The court denied the PCR motion.

ISSUE

Chandler argues that the court erred in denying his PCR motion.

HOLDING

Chandler argues that where there is a conflict between the oral and written sentence, then the oral sentence prevails. This is the rule in the majority of jurisdictions. However, our court has held that where there is a conflict, the written sentence prevails and we do not follow the lead of most jurisdictions. The distinction in this case however is irrelevant. There is no discrepancy between the oral and written sentence and this issue is without merit. The court properly denied the PCR motion.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO59869.pdf

January 12, 2010

NO. 2008-CP-01856-COA

FRANK AGUIRRE APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CIVIL - POST-CONVICTION RELIEF
MOTION FOR POST-CONVICTION RELIEF DISMISSED

TRIAL JUDGE: HON. LEE J. HOWARD
COURT FROM WHICH APPEALED: OKTIBBEHA COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: FRANK AGUIRRE (PRO SE)
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: LISA LYNN BLOUNT

BARNES, J., FOR THE COURT

VOTES: KING, C.J., LEE AND MYERS, P.JJ., GRIFFIS, ISHEE, ROBERTS, CARLTON AND MAXWELL, JJ., CONCUR. IRVING, J., CONCURS IN PART AND IN THE RESULT

FACTS

Aguirre pled guilty to attempting to coerce a person under the age of fourteen to engage in sexual relations with him. Actually he was exchanging messages over the internet with a law enforcement officer. Aguirre was sentenced to five years in custody and $50,000 in fines which were the minimum sentences applicable. Representing himself pro se, Aguirre filed six separate documents which were interpreted by the trial court as PCR motions. After the first motion was denied, Aguirre did not appeal the ruling. Instead he filed additional sworn letters with the trial court.

ISSUE

The sole issue decided by the court was whether the additional documents filed by Aguirre were properly denied as successive writs.

HOLDING

The court held that the subsequent filings by Aguirre were properly treated by the trial court as successive writs. The successive filings did not meet any of the statutory exceptions to filing a successive writ and was thus properly denied.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO60377.pdf

NO. 2009-CP-00252-COA
DARRELL W. PHILLIPS APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CIVIL - POST-CONVICTION RELIEF
MOTION FOR POST-CONVICTION COLLATERAL RELIEF DISMISSED

TRIAL JUDGE: HON. ROBERT P. CHAMBERLIN
COURT FROM WHICH APPEALED: DESOTO COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: DARRELL W. PHILLIPS (PRO SE)
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: LISA LYNN BLOUNT

GRIFFIS, J., FOR THE COURT

VOTES: KING, C.J., LEE AND MYERS, P.JJ., IRVING, BARNES, ISHEE, ROBERTS, CARLTON AND MAXWELL, JJ., CONCUR

FACTS

Philips appeals the dismissal of his PCR motion. Philips was indicted as a habitual offender for felony shoplifting. He pled guilty and was sentenced to five years in custody and five years post-release supervision. The PCR motion was denied and Phillips appeals.

ISSUES

Phillips argues that: (1) his indictment was faulty because there was insufficient evidence to support the charge of felony shoplifting; (2) the court failed to follow the plea agreement he made with the State; (3) the court incorrectly held that the decision to release Phillips is now an executive decision to be determined by the Mississippi Department of Corrections; (4) he received ineffective assistance of counsel; (5) he has a right to participate in drug court; and (6) the court failed to credit him with the time he served in Tennessee before entering his guilty plea.

HOLDING

First, Phillips argues that the indictment was insufficient because the cigarettes that he stole had not yet been put out for sale and therefore, the value could not be established as greater than $500. The court held that by pleading guilty, Phillips waived this argument. During his sentencing Phillips was asked whether he agreed with the prosecution summation of evidence. He stated that he did agree that he stole merchandise with a value greater than $500 and therefore waived this issue for appeal.

Phillips next argues that the court failed to give the sentence that was included in his plea petition. The court noted that Phillips confusion may come from the fact that he does not understand the meaning of a concurrent sentence. His sentence was to run concurrent to one he received in Tennessee. That does not mean that the Mississippi sentence ends at the same time the Tennessee sentence does. Also, the court noted that Phillips was aware that the trial court was not bound by the deal he entered into with the state. Therefore, this issue is without merit. Further, the court noticed that the sentence given to Phillips may have been too lenient in that as an habitual offender he was required to be sentenced to the maximum. He was not, but because this issue was not raised by the state, the court did not address this.

Phillips next argues that the court erred when it stated that the decision to release him is now an administrative one. The court held that Phillips must raise this issue administratively and it is therefore without merit.

Next, Phillips argues that he received ineffective assistance of counsel. Phillips makes many allegations against his trial counsel including that he lied and fabricated documents. Phillips provides no proof of these allegations and his only claim of prejudice is that he pled guilty based upon the advice of his attorney. His claims are contradicted by the record. During his plea hearing, Phillips signed a statement that he was satisfied with his attorney.

Next, Phillips claims that he was entitled to have his case transferred to drug court. He fails to cite any authority for this proposition and it is without merit.

Finally, Phillips argues that he was entitled to credit for time served in Tennessee. However, the Supreme Court has previously held that a defendant is not entitled to credit for time served in another state. The denial of the PCR motion is affirmed.

To View the Full Opinion Click Below:

http://www.mssc.state.ms.us/Images/Opinions/CO59460.pdf

January 19, 2010

NO. 2008-CP-01252-COA

BOBBY BURKS, JR. APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CIVIL - POST-CONVICTION RELIEF
MOTION FOR POST-CONVICTION RELIEF DENIED

TRIAL JUDGE: HON. LAWRENCE PAUL BOURGEOIS, JR.
COURT FROM WHICH APPEALED: HARRISON COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: BOBBY BURKS, JR. (PRO SE)
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: LISA LYNN BLOUNT

LEE, P.J., FOR THE COURT

VOTES: KING, C.J., MYERS, P.J., IRVING, GRIFFIS, BARNES, ISHEE, ROBERTS, CARLTON AND MAXWELL, JJ., CONCUR

FACTS

Burks pled guilty to possession with intent to sell. He was sentenced to twenty years with the sentence suspended. Burks violated the terms of his release and was sentenced to the full twenty years. He filed this PCR motion which was denied.

ISSUES

Burks now appeals, asserting the following issues: (1) the original sentence was not imposed within the requirements of the law; (2) the trial court did not have the authority to revoke his probation;(3) the post-release supervision was void because there was no term of incarceration prior to post-release supervision; (4) the petition to revoke probation was based upon insufficient and incorrect claims; and (5) a complete record was not provided to him on appeal.

HOLDING

Burks first three issues concern sentencing and were addressed together. Burks argued that his sentence did not comply with the statute but cited no authority. The court held that the sentence was within the statutory guidelines and the issue was without merit. Further, Burks argued that the court did not have jurisdiction to revoke his probation. This issue too was without merit. Lastly regarding the sentence, Burks argued that because there was no term of incarceration he was not

subject to post-release supervision. The court noted that Burks did serve 157 days prior to sentencing and this issue was without merit.

Next, Burks claims the petition to revoke was invalid because he was not present during the hearing. However, the record clearly reflects that Burks was present and even admitted that he violated the terms of his suspended sentence. Further, Burks argues that the court erred in sentencing him to probation as he was a prior felon. The court noted that Burks was not sentenced to probation but instead post-release supervision which was proper.

Finally, Burks argues that the record was not complete and the case should be remanded. The court noted that the documents complained of by Burks were actually filed in another cause number and there was no merit to this issue on appeal. The denial was affirmed.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO60383.pdf

January 26, 2010

NO. 2009-CP-00286-COA

RODERIC C. CATCHINGS APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CIVIL - POST-CONVICTION RELIEF

DENIAL OF POST-CONVICTION RELIEF REVERSED AND REMANDED

TRIAL JUDGE: HON. SAMAC S. RICHARDSON
COURT FROM WHICH APPEALED: RANKIN COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: RODERIC C. CATCHINGS (PRO SE)
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: LADONNA C. HOLLAND

MYERS, P.J., FOR THE COURT

VOTES: KING, C.J., LEE, P.J., IRVING, GRIFFIS, BARNES, ISHEE, ROBERTS AND MAXWELL, JJ., CONCUR. CARLTON, J., CONCURS IN RESULT ONLY.

FACTS

Catchings pled guilty to armed robbery and aggravated assault. He then filed a PCR motion claiming that his sentence was involuntary because he did not understand that the armed robbery counts had to be served day for day. The circuit court found the plea to be involuntary and offered to re-sentence Catchings. Catchings accepted the offer and he was re-sentenced. Catchings then filed

another PCR motion regarding the re-sentencing. The trial court dismissed the motion as a successive writ.

ISSUES

The court examined whether it had jurisdiction to hear the appeal and whether this was a successive writ.

HOLDING

The state argued that the appeal should be dismissed because it was not filed within thirty days of the court's order. The court held this argument to be without merit and referenced the "prison mailbox rule." In such a situation, the burden is on the state to prove that a prisoner has failed to comply with the rules. In this case they did not.

Next, the court examined whether this was a successive writ. Catchings argued that the bar to successive writs does not apply because this motion is from a separate and distinct conviction and sentence. The court agreed. Therefore, the trial court erred in dismissing the motion and the case is remanded for consideration on the merits.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO60188.pdf

February 9, 2010

NO. 2008-CA-01251-COA

SHAWN MCLAURIN APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CIVIL - POST-CONVICTION RELIEF
MOTION FOR POST-CONVICTION RELIEF DISMISSED

TRIAL JUDGE: HON. TOMIE T. GREEN
COURT FROM WHICH APPEALED: HINDS COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: J. CHRISTOPHER KLOTZ
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: JOHN R. HENRY

ISHEE, J., FOR THE COURT

VOTES: KING, C.J., LEE AND MYERS, P.JJ., GRIFFIS, BARNES, ROBERTS, CARLTON AND MAXWELL, JJ., CONCUR. IRVING, J., CONCURS IN RESULT ONLY

FACTS

In February of 2000, McLaurin was convicted of rape and sentenced to life in prison. He retained an attorney to file an appeal but the attorney failed to do so. The attorney also failed to file a PCR motion. McLaurin hired a new attorney who filed a PCR motion in February of 2003. The trial court denied the PCR motion but granted McLaurin's request for an out of time appeal. This is an appeal from the denial of the PCR motion. The out of time appeal has been filed and is pending.

ISSUE

On appeal, McLaurin does not argue that the court erred in dismissing his original PCR motion. Instead he argues that he should be allowed to file another PCR motion out of time.

HOLDING

McLaurin claims that his first attorney did not file a PCR motion and that he was forced to hire a second attorney to do so. The PCR motion that was filed by the second attorney was filed late and thus was dismissed. It was properly dismissed by the trial court. As for the motion to file another PCR motion, generally an order dismissing a PCR motion prevents a second or successive motion. However, McLaurin argues that because he is alleging a fundamental constitutional right is affected that the bar should not apply. However, because the trial court granted McLaurin's out of time appeal, these same issues are currently pending before the court. Therefore, the court affirms the trial court's judgment.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO59634.pdf

NO. 2009-CA-00220-COA

ALBERT JOINER, JR. APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CIVIL - POST-CONVICTION RELIEF
MOTION FOR POST-CONVICTION RELIEF DENIED

TRIAL JUDGE: HON. ANDREW K. HOWORTH
COURT FROM WHICH APPEALED: LAFAYETTE COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: JAMES D. MINOR
ATTORNEY FOR APPELLEE: OFFICE OF ATTORNEY GENERAL
BY: LISA LYNN BLOUNT

MYERS, P.J., FOR THE COURT

VOTES: KING, C.J., LEE, P.J., IRVING, GRIFFIS, BARNES, ISHEE, ROBERTS, CARLTON AND MAXWELL, JJ., CONCUR

FACTS

Joiner pled guilty to strong armed robbery and felony fleeing as a habitual offender. Joiner was sentenced to fifteen years on the robbery and four years on the fleeing charge. He now files this PCR motion which was dismissed by the trial court.

ISSUES

Joiner challenged his indictment and sentence as an habitual offender and raised ineffective assistance of counsel.

HOLDING

First, Joiner complains that his indictment was defective because it did not contain the words "against the peace and dignity of the state of Mississippi" and that the state failed to prove his habitual offender status. The court held that this issue was waived when Joiner pled guilty and further noted that the phrase was actually included twice in the two page indictment. The issue was without merit.

Next, Joiner complains that the state did not prove his habitual status. The court noted again that Joiner pled guilty and admitted to his habitual status. Therefore, this issue was also without merit.

Finally, Joiner claims ineffective assistance of counsel because his counsel allowed him to plead guilty to his habitual status. The court found this issue to be moot as he was properly sentenced.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO60613.pdf

NO. 2009-CA-00338-COA

JASON EDWARD WILLIAMS APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CIVIL - POST-CONVICTION RELIEF
MOTION FOR POST-CONVICTION RELIEF DENIED

TRIAL JUDGE: HON. ANDREW C. BAKER
COURT FROM WHICH APPEALED: DESOTO COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: JAMES D. FRANKS, JR.
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: LADONNA C. HOLLAND

MYERS, P.J., FOR THE COURT

VOTES: KING, C.J., LEE, P.J., GRIFFIS, BARNES, ISHEE, ROBERTS, CARLTON AND MAXWELL, JJ., CONCUR. IRVING, J., CONCURS IN RESULT ONLY

FACTS

Williams was convicted of one count of aggravated assault and one count of culpable negligence manslaughter. Williams is a 21 year old who was driving a vehicle with several minor passengers. The minors provided Williams with money to buy alcoholic beverages which all were drinking. Williams operated his vehicle in a negligent manner by turning off and on the headlights at night while traveling up and down hills. Williams lost control of the vehicle, killing one passenger and injuring another. Williams pled guilty and now files this PCR motion. The motion was denied by the trial court.

ISSUES

Williams challenged the validity of his guilty plea and alleged ineffective assistance of counsel.

HOLDING

First, Williams argued that he did not understand the elements of the two crimes to which he pleaded guilty. The court in a lengthy analysis examined the facts and the case law on this issue and found that Williams pled guilty with knowledge and understanding of both crimes.

Next, Williams complains that the trial court failed to make a determination that factual bases existed for the guilty pleas. Again, the court fully analyzed this issue and found that factual bases did exist for the guilty pleas and that the pleas were submitted to the trial court intelligently and voluntarily.

Next, Williams argues that he was not advised that a jury would not sentence him if he were to go to trial and be convicted. Since sentencing in this case is with the trial judge regardless of whether Williams pled or was convicted by a jury, this issue is without merit. However, the court did examine whether Williams was advised of the statutory maximum and minimums for these offenses. After examining the record, the court concluded that Williams was fully advised.
Further, Williams argues that he was not advised that he was giving up his right to appeal. The court examined the record and found that the trial judge did advise Williams that he was giving up this right.

Finally, Williams complains of ineffective assistance of counsel. The court examined this issue and found that Williams failed to prove either of the two prongs set forth in seminal case of *Strickland v. Washington.* Thus, this issue was also without merit and the denial of the PCR motion was affirmed.

To View the Full Opinion Click Below:

http://www.mssc.state.ms.us/Images/Opinions/CO60629.pdf

NO. 2008-CP-01546-COA

TIMOTHY WAYNE DIGGS APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CIVIL - POST-CONVICTION RELIEF
MOTION FOR POST-CONVICTION RELIEF DISMISSED

TRIAL JUDGE: HON. R.I. PRICHARD
COURT FROM WHICH APPEALED: LAWRENCE COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: TIMOTHY WAYNE DIGGS (PRO SE)
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: JOHN R. HENRY, JR.

KING, C.J., FOR THE COURT

VOTES: LEE AND MYERS, P.JJ., IRVING, GRIFFIS, BARNES, ISHEE, ROBERTS, CARLTON AND MAXWELL, JJ., CONCUR

FACTS

Diggs waived indictment and consented to be charged by information for the crime of armed robbery of Valley Quick Stop. During the sentencing hearing, Diggs apologized for his involvement in the crime and maintained that he merely stayed in the vehicle while others committed the robbery. The trial judge entered a judgment of conviction and sentenced Diggs to thirty years with twenty suspended. Diggs filed this PCR motion which was dismissed.

ISSUES

Diggs argued that his constitutional rights were violated, he was denied due process, he received ineffective assistance of counsel, and that there was no factual basis for his guilty plea.

HOLDING

Diggs argues that his constitutional rights were violated because he was sentenced to a mandatory term without the benefit of earned time. The court held that the statute here precludes inmates from earned time. Therefore, the issue is without merit.

Next, Diggs complains that he was not indicted for the crime of armed robbery. Here, Diggs pled to an information and waived indictment. The information did specifically cite the armed robbery statute. Therefore, this issue is without merit.

Diggs also complains that the state did not produce a weapon to show armed robbery. The court noted that Diggs waived the presentation of evidence when he pled guilty.

Next, Diggs argues that the trial court did not inform him that he could seek to appeal an illegal sentence. The court held that Diggs did not present any evidence to show that the sentence was illegal and therefore this issue is without merit.

Next, Diggs complains of ineffective assistance of counsel. During the plea hearing, Diggs was asked whether he was satisfied with the performance of his attorney. Diggs responded that he was. Further, an examination of the record shows no obvious deficiencies on the part of Diggs' counsel. This issue is also without merit.

Finally, Diggs argues that there is no factual basis for his guilty plea. Diggs argues that because he did not enter the store he could not be guilty of the crime. However, the law is clear that an accessory is just as guilty as a principal. This issue is also without merit. The dismissal of the PCR motion is affirmed.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO60386.pdf

NO. 2008-CP-01760-COA

TERRY LEE LATTIMORE A/K/A TERRY L. LATTIMORE, SR. APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CIVIL - POST-CONVICTION RELIEF
MOTION FOR POST-CONVICTION RELIEF DENIED

TRIAL JUDGE: HON. MARGARET CAREY-MCCRAY
COURT FROM WHICH APPEALED: WASHINGTON COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: TERRY LEE LATTIMORE (PRO SE)
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: JEFFREY A. KLINGFUSS

KING, C.J., FOR THE COURT

VOTES: LEE AND MYERS, P.JJ., IRVING, GRIFFIS, BARNES, ISHEE, ROBERTS AND MAXWELL, JJ., CONCUR. CARLTON, J., NOT PARTICIPATING

FACTS

Lattimore and Brown were indicted as habitual offenders for murder in the course of a robbery. Lattimore's conviction was affirmed by the Supreme Court. He sought leave to file this PCR motion which was granted. The motion was heard and denied by the trial court.

ISSUES

Lattimore appeals arguing that the trial court erred in denying his PCR motion, and erred by denying an evidentiary hearing on ineffective assistance of counsel.

HOLDING

First, lattimore argues that the trial court erred in denying his PCR motion without requiring the state to file an answer, without an evidentiary hearing, and without having an opportunity to conduct discovery. The court held that there is no right to an evidentiary hearing under the PCR statutes. Further, the court noted that the state did in fact file an answer. Also, the trial court granted Lattimore's motion to conduct discovery. Therefore, the trial court did not err in denying the PCR motion without a hearing.

Next, Lattimore complains of ineffective assistance of counsel at trial and on appeal. Lattimore raised some of these issues on direct appeal and some were raised for the first time in the PCR motion. Lattimore complains of his pretrial identification, a fair and impartial jury, illegal search and seizure, and the admission into evidence of a metal pipe. The court held that the pretrial identification issue was raised on appeal and thus barred on PCR review. On the issue of a fair jury, Lattimore claims that a juror failed to respond truthfully during voir dire. Lattimore failed to show how this may have prejudiced him and thus it is without merit. On the illegal search and seizure, this issue was also procedurally barred. Bar notwithstanding, the court held that the vehicle was legally searched. Finally, concerning the admission into evidence the metal pipe, this too was decided on direct appeal. Based upon the foregoing, the denial of the PCR motion was affirmed.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO60385.pdf

February 23, 2010

NO. 2008-CA-01361-COA

GEORGE G. MORRIS APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CIVIL - POST-CONVICTION RELIEF
MOTION FOR POST-CONVICTION RELIEF DENIED

TRIAL JUDGE: HON. TOMIE T. GREEN
COURT FROM WHICH APPEALED: HINDS COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: JOSEPH PATRICK FRASCOGNA
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: W. GLENN WATTS

CARLTON, J., FOR THE COURT

VOTES: KING, C.J., LEE AND MYERS, P.JJ., GRIFFIS, BARNES, ISHEE, ROBERTS AND MAXWELL, JJ., CONCUR. IRVING, J., NOT PARTICIPATING

FACTS

Morris pled guilty to one count of sexual battery and one count of gratification of lust. He was sentenced to ten years in custody. He filed this PCR motion which was denied.

ISSUES

Morris appeals, raising the issue of whether the circuit court erred in not finding that Morris was denied effective assistance of counsel. Morris asserts that the circuit court erred in not allowing him to present relevant and material evidence at his sentencing hearing, and also erred in finding that Morris's guilty pleas were freely and voluntarily given.

HOLDING

Morris argues ineffective assistance of counsel. He claims that his lawyer was ineffective by not objecting when the trial court refused to allow two witnesses to testify at sentencing. However, Morris failed to show how the additional testimony would affect his outcome. Further, Morris did not object to the exclusion of the two witnesses. Therefore, Morris and not the trial judge limited the number of witnesses and Morris did not meet the second prong of the *Strickland* test.

Next, Morris argues that the length of his sentence was misrepresented to him and as a result his guilty plea was not voluntary. However, the plea hearing clearly showed that Morris was informed that the trial judge could sentence him to the maximum. If the court erred in not stating on the record the maximum possible sentence, this was harmless error. The denial of the PCR motion was affirmed.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO61171.pdf

NO. 2009-CP-00111-COA

YANCE AGENT APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CIVIL - POST-CONVICTION RELIEF
MOTION FOR POST-CONVICTION RELIEF DENIED

TRIAL JUDGE: HON. PRENTISS GREENE HARRELL
COURT FROM WHICH APPEALED: PEARL RIVER COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: YANCE AGENT (PRO SE)
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: BILLY L. GORE

BARNES, J., FOR THE COURT

VOTES: KING, C.J., LEE AND MYERS, P.JJ., IRVING, GRIFFIS, ISHEE, ROBERTS, CARLTON AND MAXWELL, JJ., CONCUR

FACTS

Agent pleaded guilty to statutory rape and was sentenced to fifteen years with 242 days to serve and the remainder to be served on post-release supervision. While on supervision, Agent failed several drug tests. He admitted to violating the terms of his release by using illegal drugs. His suspension was revoked and Agent was sentenced to serve the remainder of his term.

ISSUES

Agent argues that he was denied a fair revocation hearing, he was denied effective assistance of his probation officer, and it was error to sentence him to a lengthy sentence.

HOLDING

First, Agent argues that he was not given ample notice of his revocation hearing and was thus denied the opportunity to bring witnesses and evidence. Here, Agent admitted during the hearing that he violated the terms of his release. Witnesses would not have changed this testimony. Accordingly, this issue is without merit.

Next, Agent argues that he was denied effective assistance of a probation officer. The officer informed Agent that he would probably be placed in the RID program. This did not happen. A probation officer is not the same as an attorney. An attorney is only provided in complex revocation proceedings. This was not a complex case as Agent admitted to the violations. This issue is without merit.

Finally, Agent argues that it was error to sentence him to a lengthy term. Here, the court imposed the remainder of Agent's sentence. This was not an abuse of discretion. This issue is without merit.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO61398.pdf

March 2, 2010

NO. 2009-CP-00812-COA

TERRANCE SMITH APPELLANT

v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CIVIL - POST-CONVICTION RELIEF
DENIAL OF PETITION FOR WRIT OF HABEAS CORPUS AFFIRMED

TRIAL JUDGE: HON. LAWRENCE PAUL BOURGEOIS JR.
COURT FROM WHICH APPEALED: HARRISON COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: TERRANCE SMITH (PRO SE)
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: DEIRDRE MCCRORY

IRVING, J., FOR THE COURT

VOTES: KING, C.J., LEE AND MYERS, P.JJ., GRIFFIS, BARNES, ISHEE, ROBERTS AND MAXWELL, JJ., CONCUR

FACTS

Smith pled guilty to a charge of forcible sexual intercourse. A charge of sexual battery was passed to the files. He was sentenced to fifteen years with twelve suspended. He served three years and was released on post-release supervision. On release Smith violated the terms of his probation which was revoked. He was sentenced to serve the remaining twelve years. He now files this Petition for Writ of Habeas Corpus which was denied. Smith admitted to filing two previous PCR motions which were denied. One was denied because he failed to file an appellate brief.

ISSUE

The sole issue on appeal was whether the court properly denied the Petition.

HOLDING

The court held that Smith admitted to filing two previous PCR motions which were denied. This motion should have been treated as another PCR motion which would properly be denied as a successive writ. Even if this were not a successive writ, there was no merit to the Petition as no evidence in the record that Smith was not the DNA match. Therefore, it was properly denied.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO61551.pdf

March 9, 2010

NO. 2008-CA-02005-COA

PAUL TAYLOR APPELLANT

v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CIVIL - POST-CONVICTION RELIEF
PETITION FOR POST-CONVICTION RELIEF DISMISSED

TRIAL JUDGE: HON. ANDREW C. BAKER
COURT FROM WHICH APPEALED: TATE COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: CHARLES E. MILLER
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: DEIRDRE MCCRORY

ISHEE, J., FOR THE COURT

VOTES: KING, C.J., LEE AND MYERS, P.JJ., GRIFFIS, BARNES, ROBERTS AND MAXWELL, JJ., CONCUR. IRVING, J., CONCURS IN RESULT ONLY

FACTS

Taylor pleaded guilty to three counts of the sale of morphine. Twice a survivor of colon cancer, Taylor claims that his condition requires morphine. He was sentenced to nineteen years with ten suspended. He filed a PCR motion which was dismissed. Taylor appeals that dismissal.

ISSUES

Taylor asserts the following allegations of error: I. The actions of Taylor's trial court attorney constituted ineffective assistance of counsel. II. The trial court erred by accepting Taylor's guilty pleas. III. The trial court should have conducted a hearing on this matter to determine Taylor's innocence. IV. The trial court erred in its failure to grant Taylor an evidentiary hearing. V. Taylor's sentence was excessive and unconstitutional.

HOLDING

First, Taylor argues ineffective assistance of counsel. However, Taylor offers no evidence to support his claim. Taylor stated under oath that he was satisfied with his attorney. He has offered no proof that his attorney was ineffective. This issue is without merit.

Next, Taylor argues that the court erred in accepting his guilty plea. However, Taylor admitted under oath that he was not coerced and he understood what he was pleading to. This issue is without merit.

Next, Taylor argues that his constitutional rights have been violated because a competency hearing should have been held. The court examined the medications Taylor was taking and his illness. However, there was no mention of competency and offered no evidence that he was incompetent. This is without merit.

Next, Taylor argues that he was entitled to an evidentiary hearing. However, Taylor offers no proof of error and cites no authority. This issue is procedurally barred.

Finally, Taylor argues that his sentence was excessive and unconstitutional. However, the sentence was within the jurisdictional limits. Further, Taylor offers no statistics or proof that his sentence is disproportionate. The conviction and sentence was affirmed.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO61400.pdf

NO. 2007-CP-01576-COA

LADENNIS GRAHAM APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CIVIL - POST-CONVICTION RELIEF
MOTION FOR POST-CONVICTION RELIEF DENIED

TRIAL JUDGE: HON. BILLY JOE LANDRUM
COURT FROM WHICH APPEALED: JONES COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: LADENNIS GRAHAM (PRO SE)
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: BILLY L. GORE

BARNES, J., FOR THE COURT

VOTES: KING, C.J., LEE AND MYERS, P.JJ., IRVING, ISHEE AND MAXWELL, JJ., CONCUR. ROBERTS, J., CONCURS IN PART AND DISSENTS IN PART WITH SEPARATE WRITTEN OPINION JOINED BY GRIFFIS, J.

FACTS

Graham was indicted for possession of cocaine with intent to distribute. He pleaded guilty and was sentenced to sixteen years with fifteen suspended upon completion of one year of house arrest. Graham violated the conditions of his house arrest and was sentenced to serve the remaining sentence in custody. He filed this PCR motion which was denied because the court did not have jurisdiction to hear the claims.

ISSUES

Graham now appeals, alleging the following assignments of error: (1) the circuit court and defense counsel failed to advise him of his right to appeal his sentence; (2) the indictment under which Graham was charged failed to set forth the correct statute and judicial district; (3) the sentence

imposed constituted an unconstitutional, illegal sentence; (4) he was denied effective assistance of counsel; and (5) his guilty plea was not voluntarily and intelligently entered.

HOLDING

The court first addressed the issue of jurisdiction because this was the deciding factor of the circuit court. The court found that the trial judge erred in finding a lack of jurisdiction. The court proceeded to address the issues raised.

First, Graham argues that he was not advised of his right to appeal his sentence. The trial court is not required to advise the defendant of his right to appeal and this issue is without merit.

Next, Graham argues that his indictment was defective. Graham waived any defect in the indictment when he pled guilty. This issue is without merit.

Next, Graham argues that his sentence was illegal as it was for an indeterminate term. He argues that because he merely violated house arrest and did not commit another crime that he could only be sentenced to the remainder of the house arrest term. In examining the sentence, the court found that it was actually more lenient than allowed. Therefore, Graham is not allowed to complain of the error. In this case the court took the unusual step of requesting an amicus brief from the Criminal Appeals clinic at the University of Mississippi because of the unusual nature of the sentence and that Graham was pro se. The court held that the sentence was self executing in that if he completed house arrest the remaining sentence would be suspended. This issue was found to be without merit from the majority.

Next, Graham claims ineffective assistance of counsel. However, Graham failed to support this claim and the issue is without merit.

Finally, the court examined whether the guilty plea was voluntary and intelligent. The circuit court properly questioned Graham on this issue and this issue is also without merit.

ROBERTS, J., CONCURRING IN PART, DISSENTING IN PART

According to Roberts, the sentencing order, as drafted by the circuit judge, allowed or at least implicitly authorized the Mississippi Department of Corrections (MDOC) to revoke Graham's suspended sentence, and the circuit court impermissibly made completion of the Intensive Supervision Program – colloquially known as house arrest – a condition of Graham's post-release supervision. In effect, the circuit court's sentence is illegal in that it suspends part of Graham's sentence while simultaneously requiring Graham to serve that sentence. Therefore, such a sentence is logistically impossible. He would remand for a hearing on the issue of whether the sentence was illegal.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO55128.pdf

NO. 2009-CP-00370-COA

ROBERT MORRIS GLASS APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CIVIL - POST-CONVICTION RELIEF
MOTION FOR POST-CONVICTION RELIEF DENIED

TRIAL JUDGE: HON. ANDREW K. HOWORTH
COURT FROM WHICH APPEALED: MARSHALL COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: ROBERT MORRIS GLASS (PRO SE)
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: LISA LYNN BLOUNT

ROBERTS, J., FOR THE COURT

VOTES: KING, C.J., LEE AND MYERS, P.JJ., IRVING, GRIFFIS, BARNES, ISHEE AND MAXWELL, JJ., CONCUR

FACTS

Robert Glass pled guilty to murder in 1999 in the Circuit Court of Marshall County. After being sentenced, he filed a petition for post-conviction relief (PCR), which was denied by the trial court. Glass appealed the denial. However, this Court affirmed the trial court's ruling. Glass filed a second petition for PCR on October 1, 2008. His second petition was also summarily denied by the trial court. Aggrieved by the trial court's disposition of his second petition for PCR, Glass appeals. Finding that Glass's current petition for PCR is barred as it is a successive writ, we affirm.

ISSUE

The sole issue on appeal was whether Glass's PCR is properly barred as a successive writ.

HOLDING

The court examined the record in this case and found that Glass did not meet any of the exceptions to a successive writ. Therefore, this motion was properly denied. Glass will not get "a second bite at the apple."

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO61549.pdf

March 16, 2010

NO. 2009-CP-00875-COA

ALEX DURODE JOHNSON, III APPELLANT

v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CIVIL - POST-CONVICTION RELIEF
PETITION FOR POST-CONVICTION RELIEF DISMISSED

TRIAL JUDGE: HON. W. ASHLEY HINES
COURT FROM WHICH APPEALED: WASHINGTON COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: ALEX DURODE JOHNSON III (PRO SE)
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: BILLY L. GORE

MAXWELL, J., FOR THE COURT

VOTES: KING, C.J., LEE AND MYERS, P.JJ., IRVING, GRIFFIS, BARNES, ISHEE AND ROBERTS, JJ., CONCUR

FACTS

Johnson pleaded guilty to possession of cocaine. He was sentenced to twelve years. He filed a PCR motion which was denied and the denial was affirmed on appeal. He now files this PCR motion. The new petition was treated as a successive writ and denied.

ISSUE

The court examined whether this writ was properly denied.

HOLDING

The court found this petition was properly denied as a successive writ. Further, the petition was untimely as it was filed outside the three year statutory period.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO61677.pdf

NO. 2009-CP-00985-COA

CHRISTOPHER M. BYRNE APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CIVIL - POST-CONVICTION RELIEF
MOTION FOR POST-CONVICTION RELIEF DENIED

TRIAL JUDGE: HON. ROBERT P. CHAMBERLIN
COURT FROM WHICH APPEALED: DESOTO COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: CHRISTOPHER M. BYRNE (PRO SE)
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: LISA LYNN BLOUNT

LEE, P.J., FOR THE COURT

VOTES: KING, C.J., MYERS, P.J., IRVING, GRIFFIS, BARNES, ISHEE, ROBERTS AND MAXWELL, JJ., CONCUR

FACTS

Christopher M. Byrne was charged with one count of conspiracy, one count of felony shoplifting, and one count of attempted felony shoplifting. On December 5, 2007, in the DeSoto County Circuit Court, Byrne entered a guilty plea to the conspiracy charge and to the attempted felony shoplifting charge. Byrne was sentenced as a habitual offender to serve five years in the Mississippi Department of Corrections on the conspiracy charge and ten years' post-release supervision on the attempted felony shoplifting charge. The felony shoplifting charge was remanded to the files.

Byrne subsequently filed a motion for post-conviction relief wherein he argued his sentence was illegal and his trial counsel was ineffective. The trial court denied his motion for post-conviction relief, finding that Byrne's sentence was legal and that Byrne had failed to prove his trial counsel was ineffective.

ISSUES

Byrne now appeals, asserting the following issues: (1) the trial court erred in sentencing him as a habitual offender; (2) he received ineffective assistance of counsel; and (3) the trial court should have granted an evidentiary hearing.

HOLDING

First, Byrne argues that the court erred in sentencing him as an habitual offender. He argues that he was previously sentenced in Tennessee to a workhouse and not a prison. The court reviewed the certified record from Tennessee and found that it met the requirements of the statute to be sentenced as an habitual offender.

Next, Byrne argues that his attorney was ineffective for failure to investigate his Tennessee convictions. The court found the Tennessee convictions were sufficient to fall within the statute and therefore, it was not ineffective assistance of counsel.

Finally, Byrne argues that he was entitled to an evidentiary hearing. However, the trial court is not required to grant an evidentiary hearing and this issue is without merit.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO61545.pdf

NO. 2009-CP-00064-COA

BILLY L. WARDLEY, JR. APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CIVIL - POST-CONVICTION RELIEF
PETITION FOR POST-CONVICTION RELIEF DISMISSED

TRIAL JUDGE: HON. W. SWAN YERGER
COURT FROM WHICH APPEALED: HINDS COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: BILLY L. WARDLEY, JR. (PRO SE)
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: HAROLD EDWARD PIZZETTA III

ROBERTS, J., FOR THE COURT

VOTES: KING, C.J., LEE AND MYERS, P.JJ., GRIFFIS, BARNES, ISHEE AND MAXWELL, JJ., CONCUR. IRVING, J., CONCURS IN PART AND IN THE RESULT WITHOUT SEPARATE WRITTEN OPINION

FACTS

Wardley was convicted of sale of cocaine in Franklin County. He was sentenced to thirty years. He appealed his conviction which was affirmed by the Supreme Court. Now, thirteen years later, Wardley files this "petition to show cause" in Hinds County. He alleges that the state inadequately funded a public defender system. The court found this to be a PCR motion. The motion was denied because it was filed in Hinds County and not the county of conviction. Further, Wardley failed to seek leave from the Supreme Court top file the motion and it was filed outside the statutory time period.

ISSUES

The court examined whether the motion was properly denied.

HOLDING

The court held that this motion was properly recognized as a PCR motion. Further, it was properly denied as being filed out of time, in the wrong county, and without leave from the Supreme Court. Finding no error the denial was affirmed.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO61710.pdf

March 30, 2010

NO. 2008-CP-01987-COA

DEMARIO WALKER APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CIVIL - POST-CONVICTION RELIEF
MOTION FOR POST-CONVICTION RELIEF DISMISSED

TRIAL JUDGE: HON. R.I. PRICHARD III
COURT FROM WHICH APPEALED: MARION COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: DEMARIO WALKER (PRO SE)
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: LAURA HOGAN TEDDER

CONSOLIDATED WITH

NO. 2008-CP-01988-COA

DEMARIO WALKER APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CIVIL - POST-CONVICTION RELIEF
TRIAL COURT DISPOSITION: PETITIONS TO SHOW CAUSE AND CLARIFY SENTENCE DISMISSED

TRIAL JUDGE: HON. R.I. PRICHARD III
COURT FROM WHICH APPEALED: MARION COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: DEMARIO WALKER (PRO SE)
ATTORNEYS FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: LADONNA C. HOLLAND

MAXWELL, J., FOR THE COURT

VOTES: LEE AND MYERS, P.JJ., GRIFFIS, BARNES, ISHEE AND ROBERTS, JJ., CONCUR. KING, C.J., AND IRVING, J., CONCUR IN RESULT ONLY

FACTS

Walker pled guilty to one count of attempting to utter a forgery. He was sentenced to ten years in custody. He was granted early release but less than one month later he was found to be in violation of the terms of his release and he was remanded into custody. Walker then filed two PCR motions

both of which were denied. The denials were appealed and affirmed. Walker later again became eligible for parole again. Again, less than six months after release, Walker's parole was revoked. He was again returned to custody. He then submitted three pro se filings; A PCR motion, a Petition for Order to Show Cause, and a Petition to Clarify Sentence. The later two filings were treated as PCR motions and dismissed as successive writs. The court also dismissed the PCR.

ISSUES

Walker argues the circuit court erred in addressing his petitions to show cause and clarify his sentence under the Mississippi Uniform Post-Conviction Collateral Relief Act (UPCCRA). He also claims the circuit court erred in dismissing a third filing, which he admits was a PCR motion. The State responds that the circuit court appropriately dismissed all three filings. The State also requests this Court decide whether Walker's "repetitive, frivolous filings" warrant imposing sanctions.

HOLDING

First, the court addressed the motions to show cause and to clarify the sentence. The court held that PCR motions are not proper vehicles for all inmate grievances. The issues raised by Walker are not properly heard in state court. The portions of the motion which do fall within the PCR statute were properly dismissed as successive.

Next, the court addressed the PCR motion. Walker argues that he was not given an opportunity to present evidence. He also argues that section 47-7-27 was unconstitutional. This motion is not procedurally barred because Walker argues that his parole was unlawfully revoked. Here, the parole board received a certified copy of Walker's guilty plea and revoked his parole. Hearings were held and Walker was able to respond. Therefore, his rights were not violated and the issue is without merit. Further, there is no merit to the argument that the statute is unconstitutional.

Finally, the state argued that Walker should be sanctioned for his many frivolous filings. The court held that sanctions were not proper at this time but Walker is on notice for this possibility in the future.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO61887.pdf

NO. 2009-CP-01069-COA

CHARLES FRANK HOLLOWAY, JR. APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CIVIL - POST-CONVICTION RELIEF
MOTION FOR POST-CONVICTION RELIEF DENIED

TRIAL JUDGE: HON. LAMAR PICKARD
COURT FROM WHICH APPEALED: COPIAH COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: CHARLES FRANK HOLLOWAY JR.- PRO SE
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: W. GLENN WATTS

IRVING, J., FOR THE COURT

VOTES: KING, C.J., LEE AND MYERS, P.JJ., GRIFFIS, BARNES, ISHEE, ROBERTS AND MAXWELL, JJ., CONCUR

FACTS

Holloway pleaded guilty to sale of crack cocaine. He then filed a PCR motion which was denied. He has appealed from that denial.

ISSUES

Holloway appeals and asserts (1) that there was no factual basis for an enhancement provision in the indictment against him, (2) that the enhancement provision in the indictment was invalid, and (3) that he has been subjected to an ex post facto law that has lengthened the amount of time that he will have to serve.

HOLDING

First, the court examined the validity of the enhancement provision. There was no mention of the enhancement provision during the plea hearing. In fact Holloway's eight year sentence is well within the unenhanced statutory sentence. There is no merit to this issue.

Finally, the court looked at the ex post facto argument. Holloway argued that he was subjected to a new law that required certain prisoners to only serve 25% of a sentence rather than 85% under prior law. However, the law was not retroactive and even if it were so, it would only benefit Holloway. There is no merit to this issue.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO62175.pdf

NO. 2009-CP-00264-COA

BOBBY VARNADO, JR. APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CIVIL - POST-CONVICTION RELIEF
MOTION FOR POST-CONVICTION COLLATERAL RELIEF DISMISSED

TRIAL JUDGE: HON. MICHAEL M. TAYLOR
COURT FROM WHICH APPEALED: LINCOLN COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: BOBBY VARNADO, JR. (PRO SE)
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: JEFFREY A. KLINGFUSS

GRIFFIS, J., FOR THE COURT

VOTES: KING, C.J., LEE AND MYERS, P.JJ., IRVING, BARNES, ISHEE, ROBERTS AND MAXWELL, JJ., CONCUR

FACTS

Varnado was convicted of two counts of sexual battery, two counts of rape, conspiracy to commit kidnapping, sexual battery and rape. He was sentenced to sixteen years with eight years suspended. He was discharged from prison but six months later the court revoked his release for violations. Varnado is currently serving the remaining eight years and has filed this PCR motion which was denied.

ISSUES

Varnado argues that the circuit court erred: (1) by failing to advise him of the conditions of his PRS at the sentencing phase and (2) because the eight year sentence to PRS exceeds the five-year maximum set forth in Mississippi Code Annotated section 47-7-34 (Rev. 2004).

HOLDING

Here, Varnado's conviction was affirmed by the Supreme Court. Prior to filing a PCR motion the defendant must seek leave with the court. Varnado did not do so and the motion was properly dismissed.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO61705.pdf

April 6, 2010

NO. 2009-CP-00486-COA

SAMMIE JOHNSON A/K/A SAMMIE LEE JOHNSON APPELLANT
v.
STATE OF MISSISSIPPI APPELLEE

NATURE OF THE CASE: CIVIL - POST-CONVICTION RELIEF
MOTION FOR POST-CONVICTION COLLATERAL RELIEF DENIED

TRIAL JUDGE: HON. ANDREW K. HOWORTH
COURT FROM WHICH APPEALED: MARSHALL COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: MICHAEL ANTHONY WILLIAMS
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL
BY: JOHN R. HENRY, JR.

GRIFFIS, J., FOR THE COURT

VOTES: KING, C.J., LEE AND MYERS, P.JJ., BARNES, ISHEE, ROBERTS AND MAXWELL, JJ., CONCUR. IRVING, J., CONCURS IN PART AND IN THE RESULT

FACTS

Johnson pled guilty to capital murder in 2002. He subsequently filed three PCR motions, all of which were denied. He did not appeal the first two denials. He did appeal the third denial, and this third denial was affirmed by the Court of Appeals as being untimely and as being barred as a successive writ. He now files this fourth PCR motion which he calls "Application for Leave to File Successive Motion for Post-Conviction Collateral Relief to Vacate and Set Aside Sentence and Conviction." The circuit court treated this motion as Johnson's fourth motion for post-conviction collateral relief. The motion was denied as time-barred and as a successive writ. The circuit court further found that, notwithstanding the procedural bar, Johnson's claims were without merit. Johnson appeals the circuit court's denial of his motion.

ISSUES

Johnson argues that his sentence is illegal; he did not waive indictment; a jury did not set his sentence; there was no factual basis for his plea; his plea was not knowingly and voluntarily entered; he was represented by only one defense attorney; and his counsel was ineffective.

HOLDING

Johnson argues that there is newly discovered evidence that excepts his fourth motion from the bar against successive PCR writs. The newly discovered evidence is an affidavit from Swanier who admits that he killed the victim and that Johnson did not hire him to do so. However, in this case, Johnson pleaded guilty to the crime. A guilty plea negates the notion that there could be undiscovered evidence to prove innocence. Johnson in his plea colloquy admitted to the facts in the indictment and knowingly entered a guilty plea. Further, the affidavit does not exculpate Johnson from the crime. Therefore, this fourth PCR motion is procedurally barred as a successive writ.

To View the Full Opinion Click Below:
http://www.mssc.state.ms.us/Images/Opinions/CO61868.pdf