SYNOPSIS OF CRIMINAL OPINIONS IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI HANDED DOWN APRIL 19, 2016

Marquis Deshune Charleston v. State, No. 2014-KA-00828-COA (Miss.Ct.App. April 19, 2016)

CASE: Attempted Aggravated Assault, Possession of a Firearm by a Felon, and Felony Fleeing
SENTENCE: Consecutive sentences of Life w/o parole as an habitual offender on all three counts

COURT: Hinds County Circuit Court
TRIAL JUDGE: Hon. William A. Gowan Jr.

APPELLANT ATTORNEY: Hunter Nolan Aikens
APPELLEE ATTORNEY: Barbara Wakeland Byrd
DISTRICT ATTORNEY: Robert Shuler Smith

DISPOSITION: Affirmed. Barnes, J., for the Court. Lee, C.J., Griffis, P.J., Ishee, Carlton, Fair, Wilson and Greenlee, JJ., Concur.. James, J., Concurs in Part Without Separate Written Opinion. Irving, P.J., Concurs in Part and in the Result Without Separate Written Opinion.

ISSUES: (1) Whether the trial court erred in sentencing Charleston as a habitual offender, (2) whether prosecutorial misconduct during closing argument deprived Charleston of his fundamental right to a fair trial, and (3) whether Charleston received ineffective assistance of counsel..

FACTS: On the afternoon of April 19, 2013, Deputy Timothy Guise was working a roadblock in Jackson. Observing a small silver SUV turn around and drive away from the roadblock, he pursued the vehicle with his lights and siren activated. After chasing the vehicle through several residential streets, the SUV finally stopped, and the passenger exited and put his hands in the air. Guise noted that the passenger appeared to be a juvenile. When Guise started to get out of the patrol car, the SUV sped off. Guise pursued it a few more blocks until it stopped in front of a residence on Verbena Street. The driver exited the vehicle and ran, and Guise pursued the driver on foot. The driver brandished a small handgun and fired one shot over his left shoulder while running. Guise sought cover, losing sight of the man. Off-duty State Capitol Police Officer Alfred Phillips, who lived nearby, heard a gunshot and saw a man jump over a nearby fence and run toward him. He retrieved his weapon and he and Guise searched the neighborhood, but could not find the driver. The SUV had stopped in front of Charleston's mother's house. The SUV belonged to Charleston's former girlfriend. She told police Charleston had taken the car to get gas. Several days later, Charleston called police and said he was in North Carolina, but wanted to surrender. He never did, but two weeks later, on May 10, 2013, based on a tip, police found Charleston at his girlfriend's apartment in northeast Jackson hiding in the air-conditioning return unit in the wall. At trial, both Guise and Phillips identified Charleston as the man they saw running. Charleston claimed he was the passenger in the SUV, not the driver. He was convicted and appealed.

HELD: (1) Charleston claims he was illegally sentenced as a habitual offender under §99-19-83. Charleston had a sexual battery conviction on October 29, 2009, and convictions for receiving stolen goods and felon in possession of a firearm from February 11, 2010. Charleston claimed the State

failed to show he served at least one year on each of those charges. A copy of Charleston's pen pack was introduced as an exhibit at the sentencing hearing. He conceded he served more than a year on the sexual battery charge, but not on the others. He was sentenced to concurrent terms of one year, two months, and four days to serve. Since he was serving concurrent terms, his discharge certificate indicated he served over 14 months for the stolen property and felon in possession charges.

(2) Counsel did not object to the prosecutor's closing arguments. The prosecutor's comments regarding Phillips's familiarity with Charleston was a correct statement of facts as presented at trial and resulted in no prejudice. Charleston asserted in his testimony that the other witnesses were lying. It was proper for the prosecution to comment about the police witnesses, "...that I can promise you wouldn't risk their career to put this guy in jail and let the real shooter get away." This was not an impermissible comment on the credibility of the witnesses. Further, the prosecution did not misstate the law on attempted aggravated assault. Charleston has not shown that he suffered any prejudice as a result of any of the prosecution's comments.

(3) Charleston argued that his counsel's failure to challenge the State's proof under §99-19-83 and to object to the prosecution's comments during closing argument constituted ineffective assistance. "As we have found no reversible error associated with those issues, we find that counsel's performance was not deficient and Charleston is not entitled to any relief." Further, he alleges counsel did not request a limiting instruction on the stipulation that Charleston was a convicted felon. Whether or not to request a limiting instruction has been held to be a part of trial strategy.

To read the full opinion, click here:
http://courts.ms.gov/Images/Opinions/CO111760.pdf

Timothy Allen McCoy v. State, No. 2013-KA-02126-COA (Miss.Ct.App. April 19, 2016)

CASE: Sexual Battery x4, and Count V: Exposing Another to HIV
SENTENCE: 30 years for Count I, 25 years for Count II, 10 years for Count III, 10 years for Count IV, and 10 years for Count V, with the sentences in Counts I-IV to run consecutively and the sentence in Count V to run concurrently

COURT: Newton County Circuit Court
TRIAL JUDGE: Hon. Marcus D. Gordon

APPELLANT ATTORNEY: Justin Taylor Cook, Timothy Allen Mccoy (Pro Se)
APPELLEE ATTORNEY: Billy L. Gore
DISTRICT ATTORNEY: Mark Sheldon Duncan

DISPOSITION: Affirmed. Greenlee, J., for the Court. Lee, C.J., Irving and Griffis, P.JJ., Barnes, Ishee, Carlton, Fair, James and Wilson, JJ., Concur.

ISSUES: (1) Whether the trial judge's personal bias against the defendant resulted in a harsher sentence, (2) whether he received effective assistance of counsel, (3) whether the evidence was sufficient, (4) whether the sentence was disproportionate.

FACTS: McCoy and G.G. met online through a social-networking website for homosexual men. In 2012, they decided to meet in person. McCoy testified he was 41 years old at the time. G.G. testified he was 15. G.G. gave McCoy the address to his father's house in Newton County near Decatur. McCoy drove to the house at approximately 2 a.m. and G.G. sneaked out and got in McCoy's car. McCoy then drove G.G. to a secluded spot on a dirt road about two miles away. They then engaged in both anal and oral sex. McCoy was HIV positive but did not use a condom. G.G. testified he told McCoy he was 15, but McCoy claims G.G. told him he was 18. McCoy also claimed he informed G.G. about his HIV. G.G. turned 16 on July 12th. G.G. alleged the encounter happened in April of 2012. McCoy claimed it was around July 28th. In May of 2012, G.G.'s mother became concerned about G.G.'s behavior, and began looking at his phone and phone records. She discovered naked pictures of men and sexually explicit text messages. G.G.'s parents turned over this information to police. McCoy was arrested in September and admitted to the encounter, but claimed in was in late July not April. He also admitted he was HIV positive and that he did not use or discuss condoms. McCoy was convicted and appealed.

HELD: (1) McCoy argues that the trial judge expressed a personal prejudice against McCoy's sexual orientation, and that this alleged prejudice resulted in an unduly harsh sentence. The State concedes that sexual orientation should not be considered an aggravating factor during sentencing. While the trial judge did make unfavorable comments regarding McCoy's homosexuality, they were not sufficient to overcome the presumption that he was unbiased and impartial. The judge's comments mainly focused on why a 41-year old man would solicit a 15-year old boy when he knew he was HIV positive. McCoy faced 130 years, but was sentenced to 75 years.

(2) McCoy's allegations that his attorney was ineffective under this assignment of error are based on facts not fully apparent from the record. McCoy can raise them again on PCR. Additionally, counsel did make the argument that the sexual encounter occurred after G.G.'s 16th birthday.

(3) Again, McCoy argues the State failed to prove the elements of sexual battery because conflicting evidence was presented as to the date of the sexual encounter. However, an investigator testified that based on his interview of G.G., conversations with G.G.'s parents, and phone records, he determined the date of the meeting was "on or about" April 13, 2012, well before G.G.'s birthday. There was also conflicting evidence as to whether McCoy told G.G. he had HIV. It was the jury's duty to resolve the conflicts.

(4) McCoy's 75-year sentence was less than the maximum allowed by statute, and McCoy has cited no cases where a comparable crime resulted in a lesser sentence.

To read the full opinion, click here:
http://courts.ms.gov/Images/Opinions/CO112512.pdf

Donald Chambliss v. State, No. 2015-CP-00263-COA (Miss.Ct.App. April 19, 2016)

CASE: PCR – Sale of Methamphetamine
SENTENCE: 8 years as a subsequent and habitual offender

COURT: Lauderdale County Circuit Court
TRIAL JUDGE: Hon. Lester F. Williamson, Jr.

APPELLANT ATTORNEY: Donald Chambliss (Pro Se)
APPELLEE ATTORNEY: Jeffrey A. Klingfuss

DISPOSITION: Dismissal of PCR Affirmed. Carlton, J., for the Court. Lee, C.J., Irving and Griffis, P.JJ., Barnes, Ishee, Fair, James, Wilson and Greenlee, JJ., Concur.

ISSUES: (1) Whether his guilty plea was entered voluntarily, knowingly, and intelligently; (2) whether he received an illegal sentence; and (3) whether he received ineffective assistance of counsel.

FACTS: On May 19, 2014, Donald Chambliss pled guilty to selling methamphetamine. During the plea colloquy, Chambliss testified that he submitted his plea freely and voluntarily, and also confirmed that he sold methamphetamine on December 12, 2012, and admitted that he was convicted of at least two prior felonies. He was subsequently sentenced to 8 years w/o parole with three years suspended, followed by five years of PRS. On February 2, 2015, Chambliss filed a PCR, which the trial court dismissed.

HELD: (1) The plea transcript shows that the trial judge reviewed the charges against Chambliss, and the trial court explained the possible sentence Chambliss could receive as a habitual offender. The trial judge also informed Chambliss of the rights Chambliss waived by pleading guilty. This claim is without merit.

(2) Chambliss received an illegally lenient sentence, since he was an habitual offender, his sentence should not have been suspended. A defendant may not complain of an illegally lenient sentence, so his claim is without merit.

(3) Chambliss failed to meet his burden of showing that his counsel's performance was deficient, and that this deficiency prejudiced his defense. He acknowledged at his plea that he was satisfied with counsel.

To read the full opinion, click here:
http://courts.ms.gov/Images/Opinions/CO110556.pdf

Timothy Rice v. State, No. 2015-CP-00446-COA (Miss.Ct.App. April 19, 2016)

CASE: PCR – Sale of Cocaine
SENTENCE: 30 years

COURT: Jones County Circuit Court
TRIAL JUDGE: Hon. Wayman Dal Williamson

APPELLANT ATTORNEY: Timothy Rice (Pro Se)
APPELLEE ATTORNEY: Alicia Marie Ainsworth

DISPOSITION: Amended Sentence on PCR Affirmed. Carlton, J., for the Court. Lee, C.J., Irving and Griffis, P.JJ., Barnes, Ishee, Fair, James, Wilson and Greenlee, JJ., Concur.

ISSUES: (1) Whether the State's amendment to Rice's indictment to charge him as a habitual offender caused unfair surprise and prevented him from presenting a defense, (2) whether the circuit court erred by sentencing Rice in front of the jury, (3) whether Rice was denied effective assistance of counsel, and (4) whether the circuit court erred by denying Rice's request for an evidentiary hearing prior to disposing of his PCR.

FACTS: Timothy Rice was convicted of selling cocaine by a jury. His appeal was affirmed on appeal. ***Rice v. State***, 172 So. 3d 768 (Miss. Ct. App. 2013). Rice filed a petition for leave to file a PCR in the trial court. He was granted permission only on a claim regarding his sentence. On PCR, the trial court corrected a subsequent drug offender enhancement portion of his sentence. Rice filed an appeal of that order.

HELD: (1), (2) and (3) In appealing the circuit court's order amending his sentence, Rice raises additional assignments of error unrelated to his subsequent-drug-offender enhancement. These issues are procedurally barred, as Rice did not have permission to pursue post-conviction relief regarding them. Both the circuit court and the COA lack jurisdiction to consider these issues.

(4) Rice claimed that he asked the circuit court for an evidentiary hearing to present evidence on his ineffective assistance claim. However, the supreme court failed to grant Rice leave to proceed on this issue. Therefore, the issue was not properly before the circuit court to consider, and the circuit court possessed no jurisdiction to hold an evidentiary hearing to allow Rice to present evidence on this claim.

To read the full opinion, click here:
http://courts.ms.gov/Images/Opinions/CO111445.pdf

Jeffery Walton v. State, No. 2015-CP-00032-COA (Miss.Ct.App. April 19, 2016)

CASE: PCR – Forcible Rape
SENTENCE: 40 years, with 8 years suspended, and five years of PRS

COURT: Rankin County Circuit Court
TRIAL JUDGE: Hon. William E. Chapman, III

APPELLANT ATTORNEY: Jeffery Walton (Pro Se)
APPELLEE ATTORNEY: LaDonna C. Holland

DISPOSITION: Dismissal of PCR Affirmed. Ishee, J., for the Court. Lee, C.J., Irving and Griffis, P.JJ., Barnes, Fair, James, Wilson and Greenlee, JJ., Concur. Carlton, J., Concurs in Result Only

Without Separate Written Opinion.

ISSUES: Whether the circuit court erred in dismissing the PCR as time barred.

FACTS: On August 26, 2004, Jeffrey Walton, masked and armed with a knife, broke into a home, tied up the female inhabitant, held a knife to her throat, and raped her. Muddy footprints were discovered by police immediately after the incident outside of the victim's home. The footprints led from the victim's home to Walton's nearby home. DNA evidence found on the victim's chest was tested and matched Walton despite Walton's prior contentions that he had nothing to do with the attack. Walton subsequently pled guilty to forcible rape in exchange for a nol pros of kidnaping and sexual-battery charges. In October 2014, Walton filed a PCR claiming that he had recently discovered that a temporary foreman had signed his indictment, thereby rendering the indictment invalid. He also claimed ineffective assistance of counsel. Walton also asserted that his recent discovery regarding his indictment constituted newly discovered evidence affecting his fundamental rights, exempting him from the time bar. The circuit court dismissed the petition and he appealed.

HELD: Walton's recent discovery about his indictment is not newly discovered evidence. The indictment was signed in 2004 and was available for Walton to review from the time it was issued until the present. Furthermore, when Walton entered a guilty plea, he waived all nonjurisdictional defects related to his indictment. Further, Walton's ineffective assistance claims regarding counsel's failure to pursue a speedy trial claim, do not meet the fundamental-rights exception to the three-year time-bar for PCRs. The PCR was properly dismissed.

To read the full opinion, click here:
http://courts.ms.gov/Images/Opinions/CO111809.pdf