

**SYNOPSIS OF CRIMINAL OPINIONS IN THE COURT OF APPEALS OF THE STATE  
OF MISSISSIPPI HANDED DOWN MAY 17, 2016**

**Casey Mark Burgess v. State**, No. 2013-KA-02078-COA (Miss.Ct.App. May 17, 2016)

**CASE:** Attempted Kidnapping and Aggravated Assault

**SENTENCE:** 10 years for the attempted kidnapping with a concurrent 20 years for the aggravated assault, but with both sentences consecutive to another crime

**COURT:** Rankin County Circuit Court

**TRIAL JUDGE:** Hon. John Huey Emfinger

**APPELLANT ATTORNEY:** Donald W. Boykin

**APPELLEE ATTORNEY:** Lisa L. Blount

**DISTRICT ATTORNEY:** Michael Guest

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

**ISSUES:** (1) Whether evidence of Burgess's prior felony convictions should have been excluded and whether evidence of his intent to appeal those convictions should have been admitted; (2) whether the trial court erred by not granting a mistrial following testimony that Burgess had been interviewed by law enforcement regarding an assault on his wife; (3) whether the trial court erred by not admitting Burgess's cell-phone records; (4) whether the trial court erred by giving an "acquit first" instruction; and (5) whether Burgess's constitutional right to a fair and impartial jury was denied.

**FACTS:** On September 1, 2011, Jeanette Yung and her two-year-old daughter arrived home after shopping at Wal-Mart. After Yung parked her vehicle, Casey Mark Burgess pulled into her driveway behind her. Yung did not know Burgess, and had never seen him before. Burgess exited his truck, told Yung, "I've got your paperwork," and began to approach her. He was armed with a Leatherman knife in his hand. He told her: "[G]et in [my] f\*\*\*ing truck or I'm going to stab you." Burgess grabbed Yung's arms and shoved her toward his truck while holding the knife to her side. Yung resisted and struggled for the knife. Yung was able to get the knife from Burgess and free herself from him. Yung ran to the front of her house screaming for help. Burgess fled and Yung called police. She was taken to the ER for treatment of several cuts to her hand. Police recovered a Leatherman tool with the blade exposed and blood on it from Yung's driveway. Later that day, Burgess's truck was spotted near his home. A deputy pursued him, but lost sight of the truck. A few minutes later, there was a report of an accident involving a truck matching the description of Burgess's truck several miles down the road. Burgess had wrecked his truck, and fled into the woods. Burgess was arrested coming out of the woods. Deputies recovered an empty Leatherman tool sheath and an item Yung had purchased from Wal-Mart in the truck. Yung also identified Burgess in a photo lineup. At trial, Burgess admitted being in Yung's driveway, but claimed he was only picking up discarded items in the neighborhood. Papers flew from his car and he was trying to retrieve them when Yung saw him with a knife and ran fleeing. He denied trying to kidnap her. He was convicted and appealed.

**HELD:** (1) The trial judge did not err in allowing the State to impeach Burgess with three prior felony convictions. (The State was not allowed to tell the jury the convictions were for the sexual battery of his wife). The court properly conducted a Peterson hearing prior to allowing reference to the convictions, and instructed the jury the convictions were for impeachment purposes only.

Further, there was no error in prohibiting Burgess from telling the jury he intended to appeal these convictions. The rule only allows the jury to hear of a pending appeal. Burgess had not yet appealed at the time of his trial.

(2) The trial judge did not err in refusing a mistrial after a detective testified that Burgess had been interviewed about an assault on his wife. The court sustained the objection to the question and instructed the jury to disregard. "After reviewing the testimony, we find that any prejudicial effect of [the investigator's] statement was cured by the trial court's admonition."

(3) Burgess argues that the trial court erred by not admitting his cell-phone records. He claimed the records supported his claim that he was in the neighborhood looking for discarded property, and not simply loitering in the subdivision. The trial judge did not err in finding the records irrelevant. The records did not have any tendency to make the existence of any fact that was of consequence to the determination of whether Burgess was guilty of attempted kidnapping and aggravated assault, more or less likely than it would have been without the evidence.

(4) The trial judge did not err in allowing an "acquit first" instruction. The instruction told the jury that if the State failed to prove aggravated assault, then it could consider the crime of simple assault. "Acquit-first" instructions are allowable under Mississippi law. The claim is without merit.

(5) Burgess claimed that he had to use his last peremptory instruction on a juror who should have been stricken for cause based on his comment that he would tend to believe law-enforcement officers because he had always known them to be factual. "Although Burgess exhausted his peremptory challenges, he fails to show that an incompetent juror was forced to sit on the jury due to an erroneous ruling by the trial court."

To read the full opinion, click here:

<https://courts.ms.gov/Images/Opinions/CO112692.pdf>

***Joseph Justice v. State***, No. 2015-KA-00068-COA (Miss.Ct.App. May 17, 2016)

**CASE:** Fondling

**SENTENCE:** 15 years with 5 to serve and 10 years PRS

**COURT:** DeSoto County Circuit Court

**TRIAL JUDGE:** Hon. Gerald W. Chatham, Sr.

**APPELLANT ATTORNEY:** George T. Holmes

**APPELLEE ATTORNEY:** John R. Henry, Jr.

**DISTRICT ATTORNEY:** John W. Champion

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

**ISSUES:** (1) Whether the tender-years hearsay exception was erroneously applied, and (2) whether the verdict was supported by the weight of the evidence.

**FACTS:** On the night of October 14, 2012, Elizabeth Justice walked into her 9-year old son's room and turned on the light. She found her husband, Joseph Justice, kneeling beside her son's bed. She found her son (N.J.) in bed with his pants and underwear down to his ankles. Elizabeth called the police, and Justice was taken to the Southaven PD for questioning. Justice told police that he was masturbating in N.J.'s room in order to hide from his wife. N.J. was interviewed by Meredith Rawl, an expert in the field of forensic interviews and child sexual abuse. N.J. told Rawl that Justice was on his knees in a chair by the bed, touching N.J.'s penis and looking at a cell phone. N.J. also told Rawl that Justice had done this before and told N.J. on previous occasions to not tell anyone because he would go to jail. N.J. later began seeing psychologist Dr. Wayne Lancaster. Videos from Rawl's interview and one of Dr. Lancaster's sessions were admitted during trial. Justice was tried for three counts of fondling, but the jury only convicted him of one count. He appealed.

**HELD:** (1) While notice was given of a tender-years hearing under MRE 803(25), the court actually conducted a competency hearing pursuant to MRE 601. During the hearing, N.J., Rawl, and Dr. Lancaster testified, and the court found that N.J. met the test for competency but did not address the tender-years exception. Justice did not object or mention the issue when Rawl and Lancaster later testified. Therefore, Justice is procedurally barred from arguing that the testimony from Rawl and Dr. Lancaster was erroneously admitted.

(2) The verdict was not against the weight of the evidence. N.J. testified at trial about what happened that night. Videos of interviews between N.J. and Rawl and N.J. and Dr. Lancaster were also played for the jury. Rawl and Dr. Lancaster both testified that they found N.J. to be credible. Elizabeth also testified about what she saw when she walked into N.J.'s room that night. Furthermore, DNA evidence was presented about a stain on N.J.'s bed sheets, where Justice was found to be the sole contributor. The jury also acquitted him of two other counts.

To read the full opinion, click here:

<https://courts.ms.gov/Images/Opinions/CO112318.pdf>

***Michael Matthews v. State***, No. 2014-KA-01816-COA (Miss.Ct.App. May 17, 2016)

**CASE:** Armed Robbery, Aggravated Assault, and Burglary of a Dwelling

**SENTENCE:** 34 years for the armed robbery, 20 years for the aggravated assault, and 25 years for burglary, all to run consecutively as a habitual offender

**COURT:** Coahoma County Circuit Court

**TRIAL JUDGE:** Hon. Charles E. Webster

**APPELLANT ATTORNEY:** Mollie Marie McMillin  
**APPELLEE ATTORNEY:** LaDonna C. Holland  
**DISTRICT ATTORNEY:** Brenda Fay Mitchell

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

**ISSUE:** *Lindsey* Brief. Whether there were any arguable issues for appeal.

**FACTS:** On May 12, 2012, police responded to the home of Catholic nuns Sister Teresa Shield and Sister Marilyn Goolay in Jonestown. Sister Shield testified that she had been asleep prior to the incident and was awakened by someone jumping on her. That person immediately cut her throat and stabbed her several times in her arm and chest. Sister Shield further testified that about \$500 in cash, which was located in her drawer, and her cell phone had been taken. In addition, Sister Shield admitted that she never saw her attacker or heard his voice. Deputies noticed that the screen of a window on one side of the house had been removed. He also found a knife with blood on it in the kitchen sink. A television was also missing. The subsequent investigation led police to a house on Cuyahoga Street in Jonestown, where officers had already taken Michael Matthews into custody. Matthews's blood was present on a pair of jeans recovered from Sister Shield's bedroom floor. Blood on Matthews's pants was also determined to belong to Sister Shield. Some of Sister Shield's property was also found in the house. Police determined the TV was sold to Geoffrey Boyd. Boyd identified Matthews as the person who sold him the TV. Matthews was convicted of all charges. On appeal, appellate counsel submitted a *Lindsey* brief. Matthews did not file a pro se brief.

**HELD:** "After an independent review of the record, we are also unable to find any arguable issues for appellate review, thereby foregoing a need for supplemental briefing. As such, we affirm."

To read the full opinion, click here:

<https://courts.ms.gov/Images/Opinions/CO113114.pdf>

***Kenneth R. Goldsmith v. State***, No. 2014-KA-01321-COA (Miss.Ct.App. May 17, 2016)  
[previous opinion from 1/5/16 withdrawn - case still affirmed, although additional issues were addressed]

**CASE:** Grand Larceny

**SENTENCE:** Life w/o Parole as a habitual offender

**COURT:** Rankin County Circuit Court

**TRIAL JUDGE:** Hon. Samac S. Richardson

**APPELLANT ATTORNEY:** Benjamin Allen Suber

**APPELLEE ATTORNEY:** Lisa L. Blount

**DISTRICT ATTORNEY:** Michael Guest

**DISPOSITION:** Affirmed. Lee, C.J., for the Court. Irving and Griffis, P.JJ., Barnes, Ishee, Carlton,

Fair, James, Wilson and Greenlee, JJ., Concur.

**ISSUES:** (1) Whether the evidence was insufficient to support the verdict, (2) whether he should have been sentenced under the original indictment, (3) whether the State failed to prove his habitual-offender status, (4) whether his sentence was disproportionate to the crime, (5) whether he received ineffective assistance of counsel, and (6) whether there was cumulative error.

**FACTS:** Kenneth R. Goldsmith was convicted of grand larceny for the theft of a bicycle, and was sentenced to life without parole as a violent habitual offender. On October 15, 2012, an employee at Ergon Trucking in Flowood noticed a suspicious truck in the company parking lot. He reported the Chevrolet Trailblazer and its license to police. On October 19, 2012, at around 8:37a.m., the same truck was seen at Ergon. That same morning an employee named Barton Lampton, had his Giant TCR Advanced SL1 bicycle stolen out of the back of his truck. According to Lampton, the bicycle retailed for \$6,000 to \$6,500, but he was able to purchase it as a demo for \$3,200. Goldsmith later pawned the bike at USA Pawn at 9:20a.m. that same morning. The Trailblazer belonged to Goldsmith's fiancée. Goldsmith claimed he never went to Ergon, but picked up his stepson and his friend that morning on Lakeland Drive. The stepson's friend (Goldsmith did not remember his name) sold Goldsmith the bike for \$45. The friend then told Goldsmith to wait 15-20 minutes. If he did not bring Goldsmith his money back, the friend stated Goldsmith could sell the bicycle. He then went to USA Pawn and sold them the bike for \$100. Ian Gallman, an employee at USA Pawn, estimated the retail value of the bicycle at \$7,000. However, Gallman paid Goldsmith \$100 because that is the amount Goldsmith requested. Gallman later listed the bicycle on Craigslist for \$4,000. On cross, Goldsmith changed his story and added he went and serviced an air conditioner at a hotel for 15 or 20 minutes before driving to the pawn shop. He was convicted and appealed.

**HELD:** (1) Goldsmith's claim on the sufficiency of the evidence is procedurally barred. Although he requested a directed verdict, he failed to renew the motion after putting on evidence during the defense case. Regardless, the claim is without merit. First, the value of the bike was sufficiently established to be over \$500. Second, there was sufficient evidence that he committed the crime. Goldsmith was in possession of the bicycle the same morning it was stolen. Goldsmith's explanation as to how he gained possession is demonstrably false. Time-stamped photographs place the Trailblazer in the parking lot at Ergon at 8:40 a.m. It was estimated that Goldsmith arrived in the Trailblazer at the pawn shop between 9:00 a.m. and 9:10 a.m. According to the pawn receipt, the transaction was completed at 9:20 a.m. This contradicted his claim of buying the bike between 8:40-9:10, then maybe waiting 15 or 20 minutes, then servicing an air conditioner, and then driving to the pawn shop.

(2) The trial court allowed the State to amend Goldsmith's indictment from a §99-18-81 habitual, to a §99-18-83 habitual. Goldsmith claims the amendment was never attached to the indictment, so he should only be sentenced under §99-18-81. The motion to amend was filed November 19, 2013, and the indictment was amended on the day of Goldsmith's trial—December 9, 2013. A copy of the order was placed in the record, and Goldsmith was sentenced on February 26, 2014. Goldsmith had sufficient notice. This issue is without merit.

(3) To establish Goldsmith's habitual-offender status, an employee of the Arkansas Department of Corrections testified that Goldsmith was convicted of aggravated assault in 1997. According to the pen pack, his sentence was five years. The witness testified that Goldsmith served more than one year. In addition, an MDOC employee testified that Goldsmith was convicted of uttering a forgery in 2007. Goldsmith served one year and sixty-four days. The record indicates Goldsmith's charges were "separately brought and arising out of separate incidents."

(4) Goldsmith also claimed his sentence was disproportionate to the crime. Goldsmith's sentence conforms to the requirements of the habitual-offender statute. This issue is without merit.

(5) Goldsmith claims he received ineffective assistance of counsel. The record is insufficient to support Goldsmith claims that his trial counsel used drugs and alcohol while representing him. He is free to raise the issue again on PCR. Counsel was not ineffective for failing to object to the court's response to a jury question. The court told the jury they had received all the evidence they could consider. Since Goldsmith's sentence was not improper, counsel was not ineffective for failing to object. Finally, Goldsmith's complaints about his appellate counsel are premature. "Addressing this issue at this stage would be improper because Goldsmith has yet to suffer the alleged prejudice that he complains of, pending the outcome of this appeal."

(6) There were no errors, so there can be no cumulative error.

To read the full opinion, click here:

<https://courts.ms.gov/Images/Opinions/CO108185.pdf>

***Cornelius Lorenzo Callahan v. State***, No. 2014-CP-00516-COA (Miss.Ct.App. May 17, 2016)

**CASE:** PCR – Armed Robbery

**SENTENCE:** 22 years w/o parole

**COURT:** Harrison County Circuit Court

**TRIAL JUDGE:** Hon. Roger T. Clark

**APPELLANT ATTORNEY:** Cornelius Lorenzo Callahan (Pro Se)

**APPELLEE ATTORNEY:** Lisa L. Blount

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

**ISSUES:** (1) Whether his plea was involuntary, and (2) whether he received ineffective assistance of counsel.

**FACTS:** On September 22, 2012, Cornelius Callahan, along with his codefendant, robbed the Dollar General in Long Beach, MS. On September 9, 2013, Callahan entered an open plea to the armed-robbery charge and was sentenced to twenty-two years to serve day-for-day. On March 3, 2014, Callahan filed a PCR. He contended that he received ineffective assistance of counsel, and

he asked the trial court to vacate his guilty plea and/or reduce his sentence. The trial court found that the motion was without merit and denied it. Callahan appealed.

**HELD:** (1) Callahan claims, for the first time on appeal, that he was improperly sentenced as an a habitual offender. His asserts his plea was involuntary since he did not realize he was pleading as a habitual offender. This claim is procedurally barred. Regardless, his ineligibility for parole did not come from being an habitual offender, but he was ineligible because he was convicted of armed robbery.

(2) Callahan also claimed that he received ineffective assistance of counsel because his counsel failed to object to and inform the judge of the vindictive remarks the assistant district attorney made to him during plea negotiations. He asserted that his attorney pressured him into taking the plea by telling him he would receive a life sentence if he did not accept the State's offer. However, he only offered his own affidavit to support his claim. This was insufficient for relief.

To read the full opinion, click here:

<https://courts.ms.gov/Images/Opinions/CO112875.pdf>

*Robert O'Neal Miller v. State*, No. 2014-CP-01742-COA (Miss.Ct.App. May 17, 2016)

**CASE:** PCR – Armed Robbery x4 and Burglary of a Dwelling

**SENTENCE:** 20 years with 20 suspended for the burglary, consecutive to four concurrent 30 year sentences, with 15 years suspended for each armed robbery

**COURT:** Lee County Circuit Court

**TRIAL JUDGE:** Hon. Paul S. Funderburk

**APPELLANT ATTORNEY:** Robert O'Neal Miller (Pro Se)

**APPELLEE ATTORNEY:** Scott Stuart

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

**ISSUE:** Whether he was exempted from the time-bar based on double jeopardy.

**FACTS:** On August 16, 2010, Robert O'Neal Miller pled guilty to four counts of armed robbery and one count of burglary. Miller filed his PCR on September 27, 2013. The circuit court found the motion time-barred and denied relief. Miller appealed.

**HELD:** Miller's PCR is time-barred unless he meets a statutory exception. He claimed the four armed robbery convictions subjected him to double jeopardy. Miller argued that only one armed robbery occurred rather than four separate armed robberies. However, Miller committed four offenses simultaneously. Double jeopardy is not violated just because those four offenses arose from a common nucleus of operative fact. There were four different victims. Miller's claim as to double jeopardy has no merit. The PCR is procedurally barred.

To read the full opinion, click here:

<https://courts.ms.gov/Images/Opinions/CO113555.pdf>

**Scotty B. Lyles v. State**, No. 2014-CP-01345-COA (Miss.Ct.App. May 17, 2016)

**CASE:** PCR – Armed Robbery

**SENTENCE:** Life w/o Parole as a habitual offender

**COURT:** Oktibbeha County Circuit Court

**TRIAL JUDGE:** Hon. James T. Kitchens, Jr.

**APPELLANT ATTORNEY:** Scotty B. Lyles (Pro Se)

**APPELLEE ATTORNEY:** Scott Stuart

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

**ISSUE:** Whether he was unfairly surprised by the State's late amendment to his indictment allowing him to be sentenced as a habitual offender.

**FACTS:** On May 22, 2006, Scotty Lyles robbed the Tobacco Shed, a convenience store in Starkville, MS. Two weeks before trial, the State filed a motion to amend Lyles's indictment to allege habitual offender status. Evidence of approximately fourteen other prior felonies such as burglary, grand larceny, and theft, in Illinois and Mississippi, was submitted to the court. However, the motion was not granted by the trial court until the day of the jury verdict. The COA subsequently affirmed his conviction. *Lyles v. State*, 12 So. 3d 552 (Miss. Ct. App. 2009). After being granted permission by the MSSCT, Lyles filed a PCR in circuit court on February 6, 2013, claiming that his indictment was improperly amended to reflect his habitual-offender status, citing *Gowdy v. State*, 56 So. 3d 540 (Miss. 2010). The trial court, however, found *Gowdy* did not apply since the motion to amend the indictment was filed before Lyles's trial and sentencing. Lyles's PCR motion was dismissed, and he now timely appeals.

**HELD:** Lyles's PCR is procedurally barred, as it is untimely. His case was affirmed on direct appeal in 2009, but he filed his PCR in 2013. Lyles cites *Gowdy* as an intervening case as an exception to the time bar. However, *Gowdy* is not retroactive. Lyles case was final before *Gowdy* was decided. Even if Lyles case was not final, *Gowdy* is distinguishable. Lyles had notice two weeks before his trial that the State sought to amend his indictment. Further, he had another case the week before where the court also found he was a habitual offender. The State moved to adopt the prior sentencing-hearing evidence for this conviction – which had the same parties and concerned the same issues – without objection from the defense. Lyles was not unfairly surprised.

To read the full opinion, click here:

<https://courts.ms.gov/Images/Opinions/CO112125.pdf>



*Abel J. Dedeaux v. State*, No. 2015-CP-00501-COA (Miss.Ct.App. May 17, 2016)

**CASE:** PCR – Possession of a Firearm by a Convicted Felon

**SENTENCE:** 6 years

**COURT:** Harrison County Circuit Court

**TRIAL JUDGE:** Hon. Christopher Louis Schmidt

**APPELLANT ATTORNEY:** Abel J. Dedeaux (Pro Se)

**APPELLEE ATTORNEY:** LaDonna C. Holland

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

**ISSUES:** (1) Whether the circuit court abused its discretion in denying his motion to withdraw his guilty plea, (2) whether he received ineffective assistance of counsel, and (3) whether the State presented sufficient evidence to support his conviction and the finding of habitual-offender status.

**FACTS:** On August 21, 2014, Abel Dedeaux entered a guilty plea to unlawful possession of a firearm by a convicted felon. The court deferred sentencing to the next week to allow Dedeaux to attend his grandmother's funeral. At sentencing, Dedeaux sought to withdraw his guilty plea. The court "reluctantly" allowed him to do so. However, several days later, the circuit judge, over Dedeaux's objection, changed his mind and withdrew permission for Dedeaux to withdraw his guilty plea. He was sentenced to 6 years. A motion for reconsideration and a formal motion to withdraw his guilty plea was denied. Dedeaux subsequently filed a PCR which the court dismissed. He appealed.

**HELD:** (1) The circuit court did not abuse its discretion by denying his motion to withdraw his guilty plea. The decision on whether to allow a defendant to withdraw a valid guilty plea lies within the discretion of the trial court. Dedeaux's claim that he did not receive a copy of the order denying his motion for reconsideration is not a cognizable ground for post-conviction relief.

(2) None of Dedeaux's claims of ineffective assistance has to do with his guilty plea. During his plea, Dedeaux also stated he was satisfied with counsel.

(3) The State sufficiently proved Dedeaux habitual offender status. The State points out that the indictments and sentencing orders from Dedeaux's previous felonies were entered into evidence during the plea hearing. The prior felony convictions of robbery and leaving the scene of an accident satisfy the statute. His valid guilty plea waived his right to have the State prove each element of the offense beyond a reasonable doubt.

To read the full opinion, click here:

<https://courts.ms.gov/Images/Opinions/CO113148.pdf>

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