

**SYNOPSIS OF CRIMINAL OPINIONS IN THE COURT OF APPEALS OF THE STATE
OF MISSISSIPPI HANDED DOWN AUGUST 2, 2016**

Jamie Cartell Payne v. State, No. 2015-KA-00641-COA

CASE: Robbery
SENTENCE: 15 years in the custody of MDOC

COURT: Lamar County Circuit Court
TRIAL JUDGE: Hon. Anthony Alan Mozingo

APPELLANT ATTORNEYS: Justin Taylor Cook

APPELLEE ATTORNEY: Laura Hogan Tedder
DISTRICT ATTORNEY: Haldon J. Kittrell

DISPOSITION: Affirmed. Ishee, J., for the Court. Lee, C.J., Griffis, P.J., Carlton, Fair, James and Greenlee, J.J., Concur. Barnes and Wilson, J.J. concur in part and in the result without separate written opinion. Irving, P.J., dissents without separate written opinion.

ISSUES: (1) Whether the trial court erred in denying Payne's *Batson* challenge and (2) Whether the trial court should have granted the motion for mistrial based on the State's closing arguments

FACTS: Merlene Breazeale was robbed as she was walking to her car in the parking lot of Ross clothing store. She was unable to identify the robber who stole her purse. The purse snatcher was later identified as Jamie Payne. At trial, Payne raised a *Batson* challenge. In providing a race-neutral reason, the State argued that the prospective juror lived in a high-crime area and that the State has prosecuted several people in that area with the same last name. On appeal, Payne argued that living in a high-crime area was a pretext for racial reasons.

Payne also argued that the trial court should have granted a mistrial after the State made comments during closing arguments alluding to Payne's constitutional right to stand trial. Payne did not object when the comment was made but did request a mistrial.

HELD: (1) Living in a high-crime area is a valid race-neutral reason for exercising a peremptory strike. The State's explanation does not have to be persuasive or plausible. Without a finding that the trial court's ruling was clearly erroneous or against the overwhelming weight of the evidence, the issue is without merit. (2) It is the trial counsel's duty to make prompt objections and insist on rulings from the court. If the comment is so inflammatory, it may be considered by the trial court, *sua sponte*. The remarks made in this case were improper but the jury was instructed not to consider the closing arguments as evidence. Because of the overwhelming evidence against Payne, the State's comments did not result in unjust prejudice and they did not require the trial court to object, *sua sponte*.

Donald William White, Jr. v. State, No. 2015-KA-00261-COA (Miss. Ct. App. August 2, 2016)

CASE: Selling one-tenth of a gram of methamphetamine
SENTENCE: 15 years, as an enhanced offender, to run consecutively to a prior sentence.
Ordered to pay a fine of \$2,500

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

APPELLANT ATTORNEYS: Benjamin Allen Suber

APPELLEE ATTORNEY: Abbie Eason Koonce
DISTRICT ATTORNEY: Bilbo Mitchell

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

ISSUE: Whether the trial court erred in denying White's motion for a new trial because the verdict was against the overwhelming weight of the evidence.

FACTS: White was convicted of selling one-tenth of a gram of methamphetamine. The circuit court entered its judgment of conviction on November 19, 2014. The trial court sentenced White as an enhanced offender on January 26, 2015. On January 29, 2015, White filed a motion for new trial or a JNOV.

HELD: Under URCCC 10.05, the motion for a new trial must be made within ten days of the judgment, and in the case of a motion for JNOV, the motion must be made within either the ten days or by the end of the term of court. To be timely, White's motion for a new trial would have to have been filed within ten day of November 19, 2014, the date that his judgment of conviction was entered. However, the motion was not filed until January 29, 2015. The circuit court did not err in denying White's motion for a new trial.

Robert W. Triplett v. State, No. 2014-KA-01838-COA

CASE: Resentencing on exploitation of a child charge
SENTENCE: forty years, non-habitual, and \$50,000 fine

COURT: Lowndes County Circuit Court
TRIAL JUDGE: Hon. Lee Sorrels Coleman

APPELLANT ATTORNEY: Mollie McMillin

APPELLEE ATTORNEY: Billy Gore
DISTRICT ATTORNEY: Forrest Allgood

DISPOSITION: Affirmed. Lee, C.J. for the court; Irving and Griffis, P,JJ., Ishee, Carlton, Fair, James, Wilson and Greenlee, JJ, concur. Barnes, J., concurs in part and in result without separate opinion.

ISSUE: (1) Illegal sentence; (2) Whether he should have been allowed to represent himself; (3) Trial court's refusal to reconsider his motion.

FACTS: Triplett was convicted of exploitation of a child and sentenced to forty years as a habitual offender. His sentence was reversed on appeal because the State had not proven he was a habitual offender. Triplett was resentenced in circuit court to forty years, as a non-habitual offender, and fined \$50,000. He appealed. His appellate counsel filed a brief in compliance with *Lindsey v. State*, 939 So. 2d 743 (Miss. 2005) stating she could find no arguable issues for appeal. Triplett filed a pro se appellate brief arguing that because he was 61 years old, his forty year sentence was equivalent to a life sentence. Additionally, he argued that the court erred in sentencing him to serve his forty years concurrent to any other sentence he had was illegal. He also argued that the trial should have let him represent himself. Finally, he argued that the trial court erred in denying his PCR motion.

HELD: Sentencing is within discretion of the trial court. There's no abuse of discretion in Triplett's sentencing. A motion for reconsideration regarding the denial of a motion for directed verdict is not grounds for relief under Mississippi Code Ann. § 99-39-5.