

*Joseph Davis*, No. 2015-KA-01047-COA (Miss. Ct. App. May 18, 2015)

**CASE:** Felon in Possession of a Firearm  
**SENTENCE:** 10 years with 2 years suspended and 5 years of supervised probation

**COURT:** Rankin County Circuit Court

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

**APPELLANT ATTORNEYS:** George T. Holmes

**APPELLEE ATTORNEY:** Alicia Marie Aimsworth

**DISTRICT ATTORNEY:** Michael Guest

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

**ISSUE:** (1) Whether the verdict was against the overwhelming weight of the evidence, and  
(2) Whether the sentence was illegal

**FACTS:** A blue Chevrolet Tahoe pulled up beside an officer at a traffic light. Officer runs search on vehicle after noticing “hanging” right mirror, tinted windows, and that car had been repainted. Car registered to someone with felony warrant and registered as a white Tahoe. Officer puts BOLO on vehicle. Car stopped with three occupants. Officers noticed smell of burnt marijuana. Found blunt in ashtray and small bag of marijuana on backseat floorboard. Found a .9mm handgun in glove box and a .45 and a .9mm under the cup holders. One of the .9mm was stolen. Officers placed two of the passengers in back of police car while searching Tahoe. The in-car audio device recorded Joseph Davis saying that Dana Owens, the driver, would take responsibility for the charges. Davis also said that the guns were not stolen. Davis also said he wanted the officers to leave his truck alone.

**HELD:** Davis did not have actual possession of the guns but the state proved constructive possession. Davis was aware of at least one of the guns. All of the guns were found in close proximity to him. His thumb print was found on the .45 that was located near his seat. The audio recording indicated that he owned the car and had knowledge of the guns.

Davis also claimed his sentence was illegal because, as a convicted felon, the circuit court couldn't suspend his sentence or place him on probation. He also argued that his sentence exceeded the maximum 10 year sentenced allowed for possession of a firearm by felon.

In 2014, Legislature amended the statute and removed the portion that prohibited a convicted felon from being placed on probation. The fact that probation caused sentence to exceed 10 years doesn't make sentence illegal. No part of the time that one is on probation shall be considered as any part of the time that he shall be sentenced to serve. Because 5 year probation is not part of Davis' actual prison sentence, his sentence is lawful.