

**SYNOPSIS OF CRIMINAL OPINIONS IN THE COURT OF APPEALS OF THE STATE
OF MISSISSIPPI HANDED DOWN MAY 31, 2016**

Natasha Orlantha Stewart v. State, No. 2014-KA-01101-COA (Miss.Ct.App. May 31, 2016)

CASE: Culpable Negligence Manslaughter

SENTENCE: 15 years, with 8 suspended and 7 to serve, followed by 3 years supervised probation

COURT: Hinds County Circuit Court

TRIAL JUDGE: Hon. William A. Gowan, Jr.

APPELLANT ATTORNEY: Jared Keith Tomlinson, Kevin Dale Camp

APPELLEE ATTORNEY: Jeffrey A. Klingfuss

DISTRICT ATTORNEY: Robert Shuler Smith

DISPOSITION: Reversed and Rendered. Ishee, J., for the Court. Lee, C.J., Irving, P.J., Barnes, Fair, James, Wilson and Greenlee, JJ., Concur. Carlton, J., Dissents with Separate Written Opinion, Joined by Griffis, P.J.

ISSUES: (1) Whether the circuit court erred in denying the JNOV motion for the culpable-negligence-manslaughter conviction; and (2) whether her conviction is in violation of her right to due process.

FACTS: Natasha Orlantha Stewart was a self-proclaimed "urban" model She communicated with Karima Gordon via social media. Karima expressed admiration for Stewart's physical appearance, specifically Stewart's enhanced buttocks. Karima told Stewart that she did not like the results of her own buttocks-enhancement procedure, and asked Stewart who had performed hers. Stewart eventually informed Karima that she went to Tracey Garner, who was in located in Jackson. On Karima's behalf, Stewart contacted Garner and explained what kind of enhancements Karima desired. The cost was \$1,500. Stewart put the two in touch by texting Karima's phone number to Garner. Stewart claimed Karima paid her \$200 as a thank-you gift for providing Garner's name. However, a friend of Karima's, Anglean, claimed the payment was necessary to procure Garner's information. On March 16, 2012, Karima and Anglean traveled to Jackson. Stewart told them she could not join them, but again provided them with Garner's number. They received directions from Garner and went to a house. Anglean backed out of the procedure, but Karima did not. Garner injected Karima's buttocks with silicone. Karima and Anglean then drove back to Atlanta. During the drive, Karima began coughing and having difficulty breathing. After going to the hospital twice and being released twice, Karima went to the ER on March 19th and was admitted. Karima eventually died on March 24, 2012.

It was determined Karima's death was caused by lipid pulmonary embolization due to massive soft tissue injection with silicone. Stewart was indicted for the felony offenses of murder, wire fraud, conspiracy to commit murder, and conspiracy to commit wire fraud. At trial, Stewart testified that Garner performed over twenty procedures on her, including several buttocks enhancements. She never had any health-related issues with any of the procedures Garner performed. Stewart also testified that she believed Garner was a nurse and relayed this information

to Karima. In fact, Garner was a cook at a nursing-home facility, and apparently had no medical training. Stewart claimed that had she known Garner was not a nurse, she would not have gone to her for the procedures, nor referred Karima to Garner. Stewart stated that she did not know anyone who died from a buttocks enhancement prior to Karima's death. Stewart was convicted of culpable-negligence manslaughter and conspiracy. The trial court granted a JNOV on the conspiracy charge. Stewart appealed.

HELD: The circuit court erred in denying Stewart's JNOV motion with regard to the manslaughter conviction. As an accessory before the fact, Stewart's actions were inconsistent with putting Stewart on the path of "conscious and wanton or reckless disregard of the probabilities of fatal consequences to others as the result of the willful creation of an unreasonable risk." Stewart did not jointly engage in administering the silicone injections. Karima had free will to make a decide whether or not to have her buttocks injected after the referral.

Stewart's referral was not made with the purpose of promoting or facilitating the criminal act of manslaughter. Stewart was not aware that Garner was acting illegally. Stewart did not have reason to speculate that the procedure could cause Karima's death. A referral does not create a conspiracy, nor is it a criminal act to make a referral. Stewart's actions were not a reckless act or done with wanton disregard for human life.

Carlton, J., Dissenting:

Judge Carlton dissented, arguing that Stewart was an accessory before the fact to culpable-negligence manslaughter resulting in Karima's death. Stewart entered into an agreement with Garner and Karima to arrange the unlawful administration of silicone injections. Stewart helped arrange for Garner to perform the unlawful medical procedure that resulted in Karima's death by culpable-negligence manslaughter. Stewart accepted \$200 for her participation in the agreement and for arranging the unauthorized medical procedure. "Stewart engaged in unlawful actions that disregarded the probability of fatal consequences to others arising from her creation of an unreasonable risk, and she engaged in conduct that facilitated the commission of culpable-negligence manslaughter as an accessory before the fact." She would affirm the conviction.

To read the full opinion, click here:

<https://courts.ms.gov/Images/Opinions/CO112642.pdf>

Daniel Rollings a/k/a "Peanut" v. State, No. 2015-KA-00214-COA (Miss.Ct.App. May 31, 2016)

CASE: Burglary of a Dwelling and Rape

SENTENCE: 20 years for the burglary with the last 5 on PRS, and a concurrent 25 years for rape, also with 5 of those years on PRS. The PRS was to be consecutive.

COURT: Leflore County Circuit Court

TRIAL JUDGE: Hon. Margaret Carey-McCray

APPELLANT ATTORNEY: K. Elizabeth Davis

APPELLEE ATTORNEY: Billy L. Gore
DISTRICT ATTORNEY: Willie Dewayne Richardson

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

ISSUES: (1) Whether the evidence was sufficient, (2) whether the verdict was against the weight of the evidence, and (3) whether he was indicted under the wrong statute for the crime of forcible rape.

FACTS: A.J. is a senior citizen who resides in Greenwood. She met Daniel Rollings through her pastor and hired him to perform demolition work on a dilapidated structure located on her property. Rollings worked for about a month on the project before he broke into A.J.'s home and raped her. On June 18, 2013, A.J. and her sister, E.H., arrived at A.J.'s house. E.H. testified that the door was locked. After speaking for a few minutes, E.H. left. A.J. then began to walk through the house to her bathroom, but was grabbed from behind. After a struggle through multiple rooms of the house, A.J. was raped. The attacker left A.J.'s house, and A.J. called the police. The attacker returned several minutes later while A.J. was on the phone with the police, and A.J. closed the door on him. When the police arrived, A.J. told them that "Peanut" (Rollings's nickname) raped her. A.J. testified that she did not invite Rollings inside her home and that she did not know of his presence in the home until the altercation began. In Rollings's statement given to the police, he admitted that he entered the home but claimed that the door was unlocked. He claimed the sex was consensual, and that A.J. allowed him to have sex with her because they were friends. Rollings was convicted and appealed.

HELD: (1) and (2) Rollings claims the State failed to prove the elements of burglary, namely the element of intent. Even opening a closed, unlocked door is sufficient to establish the breaking element of burglary. Rollings claimed that he entered the home with the intent to have consensual sexual intercourse, not to commit the crime of rape. However, this was contradicted by A.J.'s testimony. The State also presented photographic evidence of the rooms in the house where the struggle took place – showing furniture and other items knocked out of place. This evidence tends to prove that Rollings entered the house with the intent to rape A.J.

(3) Rollings is correct that §97-3-65(4)(a) also addresses "sexual intercourse not constituting forcible sexual intercourse or statutory rape" that occurs "without that person's consent by administering to such person a substance or liquid," which "prevent[s] effectual resistance." However, Rollings's contention that his offense is not included is incorrect, as this section also addresses forcible sexual intercourse. Rollings was indicted under the proper statute. This issue is without merit.

To read the full opinion, click here:
<https://courts.ms.gov/Images/Opinions/CO112447.pdf>

Divan W. Diggs v. State, No. 2015-CP-00074-COA (Miss.Ct.App. May 31, 2016)

CASE: PCR – Selling a controlled substance within 1,500 feet of a church or within 1,000 feet of the church's real property.

SENTENCE: 30 years, with 20 years suspended and 10 to serve, followed by 5 years PRS

COURT: Rankin County Circuit Court

TRIAL JUDGE: Hon. John Huey Emfinger

APPELLANT ATTORNEY: Divan W. Diggs (Pro Se)

APPELLEE ATTORNEY: Jeffrey A. Klingfuss

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

ISSUES: (1) Whether his plea was voluntarily given, (2) whether his counsel was constitutionally ineffective, and (3) whether the use of the CI constituted entrapment

FACTS: In October 2012, Divan Diggs was contacted by an acquaintance and asked to return cathinone tablets that Diggs had previously purchased from the acquaintance's boyfriend. The acquaintance was actually acting as a confidential informant for police. Diggs agreed to return the tablets in exchange for money. Diggs met the CI at a gas station across the street from a church. The tablets were exchanged for cash. Diggs was immediately arrested. On August 7, 2013, Diggs pled guilty to the charge. He subsequently filed a PCR alleging that his plea was not voluntarily given, his counsel was constitutionally ineffective, and the use of the CI constituted entrapment. The trial court denied relief and Diggs appealed.

HELD: (1) ans (2) Diggs argued that his attorney essentially forced him to plead guilty by advising him that he could be sentenced to more than 30 years if he did not accept the State's plea bargain. (He faced 60 years with the enhancement). The trial court thoroughly questioned Diggs on whether or not he understood the consequences of pleading guilty, the maximum penalty he faced, and whether he was satisfied with counsel. These claims are without merit.

(3) Diggs's entrance of a valid guilty plea waives any defense he may have had to the charge, including entrapment.

To read the full opinion, click here:

<https://courts.ms.gov/Images/Opinions/CO112309.pdf>

Sylvester Bell v. State, No. 2014-CP-01370-COA (Miss.Ct.App. May 31, 2016)

CASE: PCR – Statutory Rape

SENTENCE: 30 years as a habitual offender

COURT: Tunica County Circuit Court

TRIAL JUDGE: Hon. Johnnie E. Walls, Jr.

APPELLANT ATTORNEY: Sylvester Bell (Pro Se)

APPELLEE ATTORNEY: Alicia Marie Ainsworth

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

ISSUES: (1) Whether his plea was voluntary, (2) whether his indictment was invalid because it was not marked, dated, and signed by the circuit clerk, (3) whether he was properly sentenced as a habitual offender, and (4) whether he had ineffective assistance of counsel.

FACTS: On July 3, 2007, Sylvester Bell pled guilty to statutory rape. (Bell also pled guilty to armed robbery and aggravated assault). Bell filed his first PCR in 2009, which the trial court denied. On appeal, Bell argued that the trial court erred in failing to include the guilty-plea and sentencing-hearing transcript in the record on appeal. The COA affirmed, as he had never requested the transcript during his PCR action. *Bell v. State*, 105 So. 3d 401 (Miss. Ct. App. 2012). On April 15, 2013, Bell filed a second PCR, which the trial court dismissed as a successive writ. Bell appealed.

HELD: Bell's PCR is successive writ barred and timed barred. Bell failed to demonstrate that his claims are excepted from the procedural bars. Regardless, his claims are also without merit.

(1) Bell claimed his attorney erroneously informed him that he would be eligible for parole after 7½ years of his 10-year sentence. It appears Bell's contention relates to one of the other crimes that is not the subject of this appeal. Even taking Bell's assertion as a challenge to his statutory-rape plea, it is without merit. Bell was ineligible for parole since this was a sex offense. As his two ten-year sentences were ordered to run concurrently with his 30-year statutory-rape sentence, he was ineligible for parole on any of his sentences. Although the plea-hearing transcript is unavailable due to the court reporter's death, the judgment indicates Bell was fully-informed of the consequences of his plea. The plea petition also indicates he understood he would not be eligible for parole.

(2) Although an original certified copy of Bell's indictment is not part of the appellate record, the copy Bell attached to his PCR is stamped, dated, and signed by the circuit clerk. The fact that it is not marked "Filed," the absence of a filed date is merely procedural where it is clear the indictment was not manufactured by the State. Bell waived any procedural defects in the indictment by pleading guilty.

(3) Bell was indicted in August 2004. On June 1, 2007, the State filed a motion to amend the indictment to charge Bell as a habitual offender. The motion was granted on June 4, 2007. Bell proceeded to trial and decided to plead guilty on the second day of trial, July 3, 2007. Bell had a month's notice of the amendment prior to trial and his plea. Bell had sufficient notice of the amendment and a fair opportunity to prepare his defense.

(4) Bell argues he was denied effective assistance of counsel because his attorney failed to inform him of the elements of statutory rape, possible defenses, potential length of his sentence, the lack of parole eligibility, and did not investigate his case. However, Bell voluntarily signed a plea petition

that contains all of the information that he claims was not explained to him by counsel. His claim is without merit.

To read the full opinion, click here:

<https://courts.ms.gov/Images/Opinions/CO113662.pdf>

DISCLAIMER: These synopses are provided as a service by the Mississippi Office of State Public Defender. They are designed for the educational and research benefits of Mississippi public defenders only. As such, they do not necessarily represent the official opinion of the Office of State Defender or the Mississippi Public Defenders Association. They may be FREELY distributed whole or in part. — Beau Rudder, Director of Training, Office of State Public Defender.