

**SYNOPSIS OF CRIMINAL OPINIONS IN THE COURT OF APPEALS OF THE STATE
OF MISSISSIPPI HANDED DOWN JUNE 7, 2016**

John Patrick Jackson v. State, No. 2015-CA-00403-COA (Miss.Ct.App. June 7, 2016)

CASE: PCR – Possession of Cocaine w/ intent while in possession of a firearm and Sale of Cocaine
SENTENCE: 45 years, with 23 to serve, 22 suspended and 5 years PRS on the possession, and 23 years for the sale

COURT: Forrest County Circuit Court
TRIAL JUDGE: Hon. Robert B. Helfrich

APPELLANT ATTORNEY: William L. Ducker
APPELLEE ATTORNEY: Lisa L. Blount

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.

ISSUES: (1) Whether he was fully informed of the charges in the criminal informations filed against him; (2) whether he was informed that his charges excluded the possibility of parole; and (3) whether he was denied effective assistance of counsel.

FACTS: On April 1, 2009, John Patrick Jackson waived indictment and, by criminal information, pled guilty to two drug charges. He was sentenced to two concurrent terms of 23 years. On March 9, 2012, Jackson filed a PCR arguing that his guilty plea was involuntary and that he had received ineffective assistance of counsel. Jackson claimed that his trial attorney gave him erroneous information regarding his charges and his parole eligibility. Jackson alleged that his counsel informed him that if he pled guilty, he would be eligible for parole. However, due to the firearm enhancement, Jackson was actually ineligible for parole. Jackson claimed that he would not have pled guilty had he known that he would be ineligible for parole. After his case was summarily dismissed, he was granted an evidentiary hearing on appeal. [*Jackson v. State*](#), 178 So. 3d 807 (Miss. Ct. App. 2014). At the hearing, his counsel testified he did inform Jackson that he would not be eligible for parole. Both Jackson and his wife testified to the contrary. The circuit court determined that Jackson's proof did not rise to the standard necessary for granting PCR. The circuit court specifically found that Jackson and his wife lacked credibility. He again denied relief and Jackson appealed.

HELD: (1) The criminal informations were not fatally defective. There was no requirement for the prosecution to allege the amount of the cocaine possessed with the intent to sell, or the amount he sold. Jackson was not mistakenly charge with trafficking. Jackson is not eligible for parole because he pled guilty to possession of cocaine, with intent to distribute in violation of §41-29-139(a), with a firearm enhancement under §41-29-152. Section 47-7-3(1)(f) prohibits prisoners convicted of a felony with enhanced penalties from receiving parole.

(2) Jackson argues that he was erroneously informed by his trial attorney that he would be eligible for parole. However, the circuit court did not find his testimony and that of his wife credible. Jackson's trial attorney testified he did inform Jackson he would be ineligible for parole and that Jackson understood that.

(3) Because Jackson's claims that his attorney failed to inform him properly of his parole ineligibility was found to be without merit, so is his claim regarding ineffective assistance of counsel on the same issue.

To read the full opinion, click here:

<https://courts.ms.gov/Images/Opinions/CO113197.pdf>

Ronald Vance Mason v. State, No. 2015-CP-00594-COA (Miss.Ct.App. June 7, 2016)

CASE: PCR – Fondling

SENTENCE: 15 years, with 9 years to serve, 6 years suspended, and 5 years PRS

COURT: Alcorn County Circuit Court

TRIAL JUDGE: Hon. James Seth Andrew Pounds

APPELLANT ATTORNEY: Ronald Vance Mason (Pro Se)

APPELLEE ATTORNEY: Laura Hogan Tedder

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.

ISSUE: Whether the trial judge erred in dismissing Mason's PCR and finding his sentence legal.

FACTS: On November 18, 2010, Ronald Vance Mason pled guilty to fondling. As part of the plea, a sexual-battery charge was retired to the files. On January 7, 2015, Mason filed a PCR arguing that his sentence was illegal. Mason claimed that his sentence exceeded the statutory limit of 15 years for fondling under §97-5-23(1). The trial judge dismissed the petition, finding that the total number of years of Mason's incarceration plus the total number of years for his post-release supervision did not exceed 15 years. Mason appealed.

HELD: Although time-barred, Mason claimed his sentence was illegal, so the COA considered the merits of his claim. Mason was sentenced to a term of 15 years, but 6 years were suspended. As a result, the 9 years that Mason will be incarcerated combined with 5 years of post-release supervision is within the permissible statutory maximum sentence of 15 years for fondling. His claim is without merit and the trial judge did not err in dismissing his petition.

To read the full opinion, click here:

<https://courts.ms.gov/Images/Opinions/CO113088.pdf>

William Scott Ashwell v. State, No. 2015-CA-00023-COA, consolidated with No.

2015-CA-00626-COA (Miss.Ct.App. June 7, 2016)

CASE: PCR – Burglary and Escape

SENTENCE: 15 years for the burglary and a concurrent 5 years for escape, both to be suspended under successful completion of RID and 2 years of House Arrest and then PRS

COURT: Lawrence County Circuit Court

TRIAL JUDGE: Hon. Prentiss Greene Harrell

APPELLANT ATTORNEY: Timothy Kevin Byrne

APPELLEE ATTORNEY: Barbara Wakeland Byrd

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

ISSUES: (1) Whether the failure to file a bill of information deprived the circuit court of jurisdiction to accept a guilty plea and sentence Ashwell for burglary, (2) whether the failure to specify a date of the offense on the information rendered the plea involuntary, and (3) whether the failure to file a bill of information deprived the circuit court of jurisdiction to accept a guilty plea and sentence Ashwell for escape.

FACTS: On December 14, 2006, William Ashwell filed waivers of indictment consenting to prosecution for "burglary of an inhabited dwelling" and escape by bills of information. Ashwell also filed separate guilty-plea petitions. The circuit court conducted a guilty-plea hearing, and accepted both of Ashwell's guilty pleas. He was later sentenced to 15 years for the burglary and a concurrent 5 years for the escape. The court retained jurisdiction, allowing Ashwell to participate in the Regimented Inmate Discipline (RID) program. If Ashwell successfully completed RID and a drug and alcohol program, he would be put on house arrest for two years, and then PRS with the remainder of his sentence suspended. Presumably, Ashwell successfully completed the programs and was placed in PRS. In July 2010, Ashwell was accused of violating his PRS by testing positive for marijuana, and being arrested for possession of precursors with intent to manufacture methamphetamine. His suspended sentence was revoked. Ashwell filed PCRs challenging both of his convictions. He claimed that the circuit court never had jurisdiction to accept his 2006 guilty pleas because the underlying criminal dockets did not reflect the existence of bills of information. Apparently, they were never filed. The trial court appointed Ashwell counsel and held an evidentiary hearing. The State argued that Ashwell's guilty pleas were still valid based on other documents that referenced the bills of information. The prosecutor at the time of Ashwell's plea submitted an affidavit that asserted Ashwell would not have been allowed to plead guilty without a sworn and executed bill of information. Relying on the affidavit, Ashwell's waivers of indictment, the guilty-plea petitions, and statements during the guilty-plea hearing, the circuit court denied relief. Ashwell appealed.

HELD: (1) and (3) Ashwell argues that the absence of a filed bill of information in the criminal docket automatically entitles him to relief. Alternatively, he claimed that the documents the court relied on were inadequate to demonstrate that a bill of information had existed. The COA found that, “under the precise circumstances of this case,” the circuit court acted within its discretion in denying relief.

We find no merit to Ashwell's claim that his burglary conviction must be vacated because a bill of information was not filed. All parties involved certainly proceeded as though a bill of information existed. And Ashwell cites no authority to support a finding that the lack of a filed bill of information automatically results in reversible error. The failure to file the bill of information in this case appears to be the result of oversight.

(2) Ashwell also claims his pleas were not voluntary because the information did not specify the date of the offense. However, Ashwell waived this procedural defect when he pled guilty. This claim is also time-barred.

To read the full opinion, click here:

<https://courts.ms.gov/Images/Opinions/CO113758.pdf>

Nedra Pittman v. State, No. 2015-CA-00502-COA (Miss.Ct.App. June 7, 2016)

CASE: PCR – Embezzlement and Uttering a Forgery

SENTENCE: 10 years with 2 years on house arrest, and upon successful completion of the house arrest, 8 years suspended for both charges to be concurrently

COURT: Washington County Circuit Court

TRIAL JUDGE: Hon. W. Ashley Hines

APPELLANT ATTORNEY: Ernest Tucker Gore

APPELLEE ATTORNEY: Alicia Marie Ainsworth

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

ISSUE: Whether the trial judge erred in finding the PCR time barred and, in the alternative, that Pittman received effective assistance of counsel.

FACTS: On September 26, 2006, Nedra Pittman pled guilty to one count of embezzlement and one count of uttering a forgery. The State's recommended a ten year suspended sentence with 5 years PRS. The trial judge sentenced her to 10 years, but placed her on house arrest for two years with the remaining 8 suspended. In February 2014, Pittman's probation was revoked, and she was ordered to serve two years and ten months. On February 3, 2015, Pittman filed a PCR, alleging ineffective assistance of counsel. The trial court denied Pittman's PCR as time-barred, and she appealed.

HELD: Pittman argues that at the time she entered her guilty plea, she was not aware that she could receive house arrest or that the trial court could reject the State's recommended sentence. However, Pittman's claim of ineffective assistance is time-barred. She had until September of 2009 to file a PCR. She did not complain until she was revoked in 2014, filing the PCR in 2015.

Notwithstanding the bar, her claim is without merit. Pittman's sentencing order reflects that she knew the minimum and maximum sentences, and acknowledged that her plea was voluntarily, knowingly, and willfully made. The order also shows that the trial court questioned Pittman regarding her counsel's performance, and she knew the trial court did not have to accept the State's recommendation. Pittman has failed to prove any deficiency on the part of her counsel.

To read the full opinion, click here:

<https://courts.ms.gov/Images/Opinions/CO112824.pdf>

Also of note:

Patrick Higgins v. State, No. 2014-CA-00251-COA (Miss.Ct.App. June 7, 2016)

CASE: Civil – Claim for Compensation for Wrongful Conviction and Imprisonment

COURT: Warren County Circuit Court

TRIAL JUDGE: Hon. M. James Chaney Jr.

APPELLANT ATTORNEY: David Neil McCarty, Graham Patrick Carner, Sage Egger Harless

APPELLEE ATTORNEY: Alison O'Neal McMinn

DISPOSITION: Denial of Appellant's Claim for Compensation for Wrongful Conviction and Imprisonment Affirmed. Irving, P.J., for the Court. Lee, C.J., Griffis, P.J., Ishee, Carlton, Fair, Wilson and Greenlee, JJ., Concur. Barnes and James, JJ., Not Participating.

ISSUES: (1) Whether the trial judge erred in applying the statutory presumption of fraudulent intent, and (2) whether the trial judge improperly relied on highly prejudicial evidence when weighing his credibility.

FACTS: In December 1994, Patrick J. Higgins was convicted by a jury of three counts of issuing and delivering bad checks. Higgins operated and served as the president of Delta Glass Repair Inc. He issued three separate checks for three orders to Southern Lock & Supply. The account was subsequently closed, and the checks were sent back to Southern Lock. (The check amounts were for \$434.01, \$1,326.21, and \$1,313.84). He was sentenced to three years for each count. However, that conviction was later reversed and rendered in an unpublished opinion on appeal. *Higgins v. State*, 95-KA-00124-COA (Miss. Ct. App. Mar. 10, 1998). Higgins was release after serving four years and two months in prison. In February 2012, Higgins filed an action under §11-44-1 against the State, seeking compensation for wrongful imprisonment. The trial judge ruled for the State, finding Higgins was not credible. He appealed.

HELD: (1) This is no longer a criminal matter, and therefore Higgins has the burden of proof under the wrongful conviction statute (§11-44-1). The trial court did not rely on the statutory presumption of fraudulent intent found in §97-19-57(1), but rather found that Higgins "intended to defraud" Southern Lock.

As such, it was Higgins's duty to disprove every element of the crime for which he was charged and convicted. Higgins had the burden of producing credible evidence to (1) establish that he did not intend to defraud Southern Lock and (2) rebut the presumption that his failure to pay the dishonored checks after receipt of the fifteen-day notices evidenced his intent to defraud.

Higgins was unable to rebut the properly applied statutory presumption.

(2) Higgins also argued that it was error for the trial court to admit, among other things, evidence that Higgins had pled guilty to theft by deception in 2011, and that Higgins blamed his wife during the criminal trial, knowing she could not be called due to spousal immunity. However, there was substantial evidence to support the trial court's finding that Higgins was not a credible witness.

Higgins's prior theft-by-deception conviction was not used to show that he had acted in conformity therewith, but rather to attack his credibility as a witness. While the trial court did incorrectly quote Higgins's testimony regarding the money that he alleged Delta Glass received in payments immediately before he wrote the checks to Southern Lock, this misstatement was slight in nature and did not prejudice Higgins. Finally, there was no evidence in the record to show the court improperly relied on a handwritten letter concerning Higgins's wife. The court only noted that he did blame his wife during the criminal trial, claiming she signed the checks in order to procure a divorce. Nothing indicates the court relied on a handwritten letter that was not admitted at his trial.

To read the full opinion, click here:

<https://courts.ms.gov/Images/Opinions/CO113909.pdf>

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