

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2015-KA-00261-COA

**DONALD WILLIAM WHITE, JR. A/K/A
DONALD WILLIAM WHITE A/K/A DONALD
WHITE**

APPELLANT

v.

STATE OF MISSISSIPPI

APPELLEE

DATE OF JUDGMENT:	01/26/2015
TRIAL JUDGE:	HON. LESTER F. WILLIAMSON JR.
COURT FROM WHICH APPEALED:	LAUDERDALE COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	OFFICE OF STATE PUBLIC DEFENDER BY: BENJAMIN ALLEN SUBER
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: ABBIE EASON KOONCE
DISTRICT ATTORNEY:	BILBO MITCHELL
NATURE OF THE CASE:	CRIMINAL - FELONY
TRIAL COURT DISPOSITION:	CONVICTED OF SELLING ONE-TENTH OF A GRAM OF METHAMPHETAMINE AND SENTENCED, AS AN ENHANCED OFFENDER, TO FIFTEEN YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS, TO RUN CONSECUTIVELY TO A PRIOR SENTENCE, AND ORDERED TO PAY A FINE OF \$2,500
DISPOSITION:	AFFIRMED - 08/02/2016
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

BEFORE LEE, C.J., WILSON AND GREENLEE, JJ.

LEE, C.J., FOR THE COURT:

FACTS AND PROCEDURAL HISTORY

¶1. Donald William White Jr. was convicted in the Circuit Court of Lauderdale County,

Mississippi, of selling one-tenth of a gram of methamphetamine under Mississippi Code Annotated section 41-29-139 (Supp. 2015). The circuit court entered its judgment of conviction on November 19, 2014. On January 26, 2015, White was sentenced as an enhanced offender to fifteen years in the custody of the Mississippi Department of Corrections, to run consecutively to a prior sentence. He was also ordered to pay a \$2,500 fine and fees of \$855. Subsequently, on January 29, 2015, White filed a motion for a new trial or a judgment notwithstanding the verdict (JNOV). On appeal, White claims that the circuit court erred in denying his motion for a new trial because the verdict was against the overwhelming weight of the evidence.

DISCUSSION

¶2. “[Uniform Rule of Circuit and County Court] 10.05 requires that a 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 either within the ten days or by the end of the term of court.” *Wells v. State*, 73 So. 3d 1203, 1206 (¶7) (Miss. Ct. App. 2011) (quoting *Ross v. State*, 16 So. 3d 47, 53 (¶7) (Miss. Ct. App. 2009)). White’s judgment of conviction was entered on November 19, 2014. So to be timely, White’s motion for a new trial would have to have been filed within ten days of that date. *See Conwill v. State*, 168 So. 3d 1080, 1084 (¶19) (Miss. Ct. App. 2013). Instead it was not filed until January 29, 2015.¹ Therefore, the circuit court did not err in denying White’s motion for a new trial.

¹ Further, White’s motion was filed outside of the term of court, as the November 2014 term of the Lauderdale County Circuit Court began on the first Monday of November and ran for four weeks. *See State of Mississippi Judiciary Directory and Court Calendar* (2014).

¶3. THE JUDGMENT OF THE CIRCUIT COURT OF LAUDERDALE COUNTY OF CONVICTION OF SELLING ONE-TENTH OF A GRAM OF METHAMPHETAMINE AND SENTENCE, AS AN ENHANCED OFFENDER, OF FIFTEEN YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS, TO RUN CONSECUTIVELY TO A PRIOR SENTENCE, AND TO PAY A FINE OF \$2,500, IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO LAUDERDALE COUNTY.

IRVING AND GRIFFIS, P.JJ., BARNES, ISHEE, CARLTON, FAIR, JAMES, WILSON AND GREENLEE, JJ., CONCUR.