IN THE SUPREME COURT OF MISSISSIPPI

NO. 2013-CA-00415-SCT

FRANK SANDERS TIPTON

v.

STATE OF MISSISSIPPI

ON MOTION FOR REHEARING

DATE OF JUDGMENT:	02/06/2013
TRIAL JUDGE:	HON. ROBERT P. KREBS
TRIAL COURT ATTORNEYS:	THOMAS M. FORTNER ROSS PARKER SIMONS ERIK M. LOWERY ROGER GOOGE
COURT FROM WHICH APPEALED:	JACKSON COUNTY CIRCUIT COURT
ATTORNEYS FOR APPELLANT:	THOMAS M. FORTNER ROSS PARKER SIMONS
ATTORNEYS FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: MALISSA WINFIELD JOHN R. HENRY, JR.
NATURE OF THE CASE:	CIVIL - OTHER
DISPOSITION:	REVERSED AND RENDERED - 10/30/2014
MOTION FOR REHEARING FILED:	03/28/2014
MANDATE ISSUED:	

EN BANC.

KITCHENS, JUSTICE, FOR THE COURT:

¶1. The motion for rehearing is granted. The original opinions are withdrawn, and these opinions are substituted therefor.

¶2. Frank Tipton was wrongfully convicted of extortion and was sentenced to one year in prison and two years of house arrest in Mississippi's Intensive Supervision Program (ISP).

After his conviction and sentence were vacated by this Court,[1] Tipton brought this civil action seeking compensation for the 300 days he served in prison and the two years he served under house arrest in the ISP. The State has agreed that Tipton is entitled to compensation for the 300 days spent in prison, but argues that the time he spent in the ISP is not compensable. We find that an inmate who serves time under house arrest in the ISP and later is determined to have been wrongfully convicted is entitled to compensation for that time under our wrongful conviction compensation statutes.

FACTS AND PROCEDURAL HISTORY

¶3. Frank Tipton was convicted of extortion under Mississippi Code Section 97-11-33.[2] Tipton's circuit court sentencing order required him to spend one year in a Mississippi Department of Corrections (MDOC) prison facility and two years in the ISP house arrest program. The remainder of his sentence was suspended followed by two years of post-release supervision. Due to his trusty status, Tipton was released from the prison facility with sixty days deducted from his original sentence.

¶4. Following the ISP guidelines for house arrest, Tipton was required to establish a residence approved by his correctional officer, pay monthly fees, submit to inspection of his residence, and submit to testing for drugs and alcohol at the field officer's discretion. *See*

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[1] ***Tipton v. State***, 41 So. 3d 679, 680 (Miss. 2010).

[2] "If any . . . . employee of any contractor providing incarceration services or any other officer, shall knowingly demand, take or collect, under color of his office, any money fee or reward whatever, not authorized by law, . . . such officer, so offending, shall be guilty of extortion, and . . . punished by fine not exceeding Five Thousand Dollars ($5,000.00), or imprisonment for not more than five (5) years, or both, and shall be removed from office." Miss. Code Ann. § 97-11-33 (Rev. 2014).

Miss. Code Ann. § 47-5-1013 (Rev. 2011). While under house arrest, Tipton was confined to his home unless attending work, school, community service, or given explicit permission by his correctional field officer. *See* Miss. Code Ann. § 47-5-1013(d) (Rev. 2011). Had Tipton failed to complete the ISP house arrest program to the satisfaction of his field officer, he would have been returned to an MDOC prison facility.[3] *See* Miss. Code Ann. § 47-5-1003 (Rev. 2011).

¶5. While serving his sentence, Tipton appealed his conviction. This Court reversed and vacated Tipton's conviction, holding that he was not guilty of the crime for which he had been convicted. ***Tipton v. State***, 41 So. 3d 679, 682-83 (¶ 14) (Miss. 2010). Tipton filed a civil complaint for compensation under Mississippi Code Section 11-44-3 for his time served in the MDOC prison facility and under house arrest in the ISP.[4] The State made an offer of judgment in the amount of $41,666 for the time Tipton had served in the MDOC prison facility, which he rejected. Tipton argued that he was entitled to $141,666, which included $100,000 for the time he had served in the ISP. After hearing motions for summary judgment from both parties, the trial court rejected Tipton's compensation claim for his time served under house arrest in the ISP and granted the State's motion for summary judgment, which Tipton appeals.

ANALYSIS

[3]In fact, the MDOC had the authority to remove Tipton from house arrest and place him back into a prison facility without holding any type of hearing whatsoever. *See* ***Brown v. Miss. Dep't of Corr.***, 906 So. 2d 833, 835 (¶ 6) (Miss. Ct. App. 2004), *overruled on other grounds by* ***Johnson v. State***, 77 So. 3d 1152, 1155 (¶ 10) (Miss. Ct. App. 2012)).

[4]Mississippi Code Sections 11-44-1 to 11-44-7 work together to create a compensation scheme for claimants who have been wrongfully imprisoned.

¶6. The decision of a circuit court to grant or deny a summary judgment is reviewed *de novo*. ***Poppenheimer v. Estate of Coyle***, 98 So. 3d 1059, 1062 (¶ 7) (Miss. 2012) (citing ***Whitaker v. Limeco Corp***., 32 So. 3d 429, 433-34 (¶ 10) (Miss. 2010)). Statutory interpretation is a question of law subject to *de novo* review. ***Arceo v. Tolliver***, 19 So. 3d 67, 70 (¶ 9) (Miss. 2009). The State argues that Tipton should be compensated for the 300 days that he served in the prison facility operated by the MDOC, and that his confinement under house arrest in the ISP should not be compensable. Tipton contends that he should be compensated for his full sentence, which included the 300 days spent in a MDOC prison facility, and in addition, the two years that he spent under house arrest in the ISP.

¶7. We must determine whether a person wrongfully confined under house arrest in the ISP is "imprisoned" such that he or she may be compensated under Mississippi's wrongful conviction compensation statutes. This is a question of law. This Court does not engage in statutory interpretation if a statute is plain and unambiguous. ***Miss. Methodist Hosp. & Rehab. Ctr., Inc. v. Mississippi Div. of Medicaid***, 21 So. 3d 600, 607 (¶ 18) (Miss. 2009); (citing ***In re Guardianship of Duckett***, 991 So. 2d 1165,1191 (Miss. 2008)). However, statutory interpretation is appropriate if a statute is ambiguous or is silent on a specific issue. ***Methodist Hosp.***, 21 So. 3d at 607 (¶ 18). The ultimate goal of the Court is to determine legislative intent. ***Id.*** (citing ***Allred v. Yarborough***, 843 So. 2d 727, 729 (Miss. 2003)). This Court consistently has held that if a statute is ambiguous, the Court must "carefully review statutory language and apply its most reasonable interpretation and meaning to the facts of a particular case." ***Caldwell v. N. Miss. Med. Ctr.***, 956 So. 2d 888, 891 (¶ 10) (Miss. 2007) (quoting ***Pope v. Brock***, 912 So. 2d 935, 937 (Miss. 2005)). In establishing the meaning of

an ambiguous statute, this Court also may look to the historical background, its subject matter, and the purposes and objects to be accomplished. ***In re Guardianship of Duckett***, 991 So. 2d at 1182 (¶ 37).

¶8. The question of whether a wrongfully convicted inmate who served time in the ISP is entitled to compensation is an issue of first impression for this Court. To be eligible for compensation, a claimant must have (1) been charged with a felony; (2) been sentenced; (3) served either the full or a partial amount of that sentence; (4) and been released on grounds not inconsistent with innocence. Miss. Code Ann. § 11-44-3 (Rev. 2012). To be awarded compensation, Tipton must prove, by a preponderance of the evidence: (1) that he was convicted of one or more felonies and sentenced to a period of imprisonment which he has served in full or in part; (2) and that his judgment of conviction was reversed or vacated. Miss. Code Ann. § 11-44-7 (Rev. 2012). Tipton clearly has satisfied all of the requirements of compensation with one possible exception: whether he was sentenced "to a period of imprisonment" while under house arrest. Accordingly, the success of his claim turns on the interpretation of what it means to be subjected to a period of imprisonment, and whether someone under house arrest can be said to have been imprisoned during that period.

¶9. The purpose of the compensation statutes is to compensate innocent persons who have been uniquely victimized because they were wrongly convicted of felonies and subsequently imprisoned. Miss. Code Ann. § 11-44-1 (Rev. 2012). The definition of "imprisonment" is not limited to addressing only imprisonment in "brick and mortar" prisons. Webster's Dictionary defines "imprison" as "to confine in *or as if in prison*." *Webster Random House Dictionary* 963 (2001) (emphasis added). Black's Law Dictionary defines "imprisonment" as [t]he act

of confining a person, esp. in a prison," or "[t]he state of being confined; a period of confinement." *Black's Law Dictionary* 825 (9th ed. 2009). Accordingly, imprisonment may occur in an actual prison, but it also can include a state of confinement, which can occur anywhere and vary widely in degree. Indeed, this Court has long recognized that false imprisonment, compensable in tort, can occur in places as innocuous as a second-hand store,[5] a casino,[6] or even a field.[7] So long as a person is confined "within boundaries fixed by the defendant," that person is subject to imprisonment for the purposes of a false imprisonment claim. ***State for Use of Powell v. Moore***, 252 Miss. 471, 478, 174 So. 2d 352, 355 (1965) (quoting Prosser, *The Law of Torts* § 12 (3d ed. 1964)). The Legislature has recognized that false imprisonment can occur in settings outside of a prison, as it has specifically provided immunity from such a claim to store owners who detain customers whom they suspect of shoplifting. *See* Miss. Code Ann. § 97-23-95 (Rev. 2014). There was never a requirement in any of these civil cases that the imprisonment occur in an actual prison. Throughout our State's history, if a person was confined within boundaries fixed by another party, that person has been considered to have been imprisoned.

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[5] ***Turner v. Hudson Salvage, Inc.***, 709 So. 2d 425, 429 (¶ 20) (Miss. 1998) (holding that a second-hand store was not immune from a suit for false detention when it held a customer in the manager's office for questioning after a security guard already had determined that the customer did not shoplift).

[6] ***Alpha Gulf Coast, Inc. v. Jackson***, 801 So. 2d 709, 720 (¶¶ 28-31) (Miss. 2001) (holding that a plaintiff could be falsely imprisoned when he was "detained by the casino employees," handcuffed, and held in a security office).

[7] ***Witten v. Cox***, 799 So. 2d 1, 9 (¶ 12) (Miss. 2000) (holding that evidence was sufficient to support a false imprisonment claim where the defendant held the plaintiffs at gunpoint and placed them under citizen's arrest).

¶10. To receive compensation, Tipton was required to show that he was "sentenced to a term of imprisonment." Since "imprisonment" can mean confinement, and is not specific to being placed in an actual prison, we must look beyond the plain language of the statute to determine whether house arrest should be deemed "imprisonment" for the purposes of compensation. While this is an issue of first impression, there is Mississippi case law interpreting the status of inmates in the ISP as it relates to the MDOC's classification of those inmates.

¶11. Although the ISP is called an "alternative to incarceration," inmates in that program are under the complete jurisdiction of the MDOC. Miss. Code Ann. § 47-5-1003(3) (Rev. 2011). The Mississippi Court of Appeals has found that an inmate "participating in the house arrest program *or* serving time as an inmate in the general prison population was *confined as a prisoner* under the jurisdiction of the Mississippi Department of Corrections in the normally understood sense of that term." ***Lewis v. State***, 761 So. 2d 922, 923 (¶ 5) (Miss. Ct. App. 2000) (emphasis added). The Court of Appeals consistently has sided with the State's argument that the removal of an inmate from the ISP to a prison facility involves no liberty interest, and instead is merely a "change in . . . housing assignment and classification, which does not require a hearing since it does not involve a liberty interest." ***Brown v. Miss. Dep't of Corr.***, 906 So. 2d 833, 835 (¶ 6) (Miss. Ct. App. 2004), *overruled on other grounds by* ***Johnson v. State***, 77 So. 3d 1152, 1155 (¶ 10) (Miss. Ct. App. 2012). Furthermore, the Court of Appeals defines house arrest as "an alternative form of *confinement*." ***Ivory v. State***, 999 So. 2d at 420, 425 (¶ 11) (Miss. Ct. App. 2008) (citing ***Lewis***, 761 So. 2d at 925 (¶ 4)) (emphasis added). The statute establishing the ISP defines "house arrest" as "the *confinement*

of a person convicted or charged with a crime to his place of residence under the terms and conditions established by the department or court." Miss. Code Ann. § 47-5-1001 (Rev. 2011) (emphasis added). Imprisonment can mean confinement. The trial judge in ***Ivory*** best characterized the ISP by instructing the defendant to think of the ISP as "being in the penitentiary except sleeping at home." ***Ivory***, 999 So. 2d at 423 (¶ 3).

¶12. There is some precedent to the opposite effect, however. Ironically, it comes from this Court's decision in Tipton's criminal appeal. There, this Court stated that the ISP is an alternative to incarceration, and therefore it is not incarceration. ***Tipton***, 41 So. 3d at 680 (¶ 1). The State argues that, if house arrest under the ISP is not incarceration, time in the ISP should not be compensable. However, Tipton's *criminal* appeal confronted an entirely different issue than the *civil* suit now before us. That case involved whether Tipton technically was guilty of the crime of extortion, whereas here we are determining whether the State is civilly liable for the time Tipton spent as an inmate in the ISP. In Tipton's extortion case, the statute under which he was wrongfully convicted and sentenced was reviewed under the "bedrock law in Mississippi that criminal statutes are to be strictly construed against the State and liberally in favor of the accused." ***Id.*** at 682 (¶ 11) (quoting ***Coleman v. State***, 947 So. 2d 878, 881 (Miss. 2006)). The ***Tipton*** criminal appeal does not control this case because it did not analyze the status of a person enrolled in a house arrest program, nor did it determine whether that status was equivalent to "imprisonment" to make such a person eligible for compensation if wrongfully convicted.

¶13. The several Court of Appeals cases analyzing ISP inmates' status relative to the MDOC more aptly conform to the case before us. The statutory scheme of the ISP as well

as several Court of Appeals decisions indicate that the purpose of the ISP is to confine inmates who are under the complete jurisdiction of the ISP. The State consistently has argued that prisoners in the ISP are, for all intents and purposes, prisoners with the same liberty interests as those in actual prisons. House arrest required Tipton to submit completely to the MDOC, giving the State access to his home and his body; and he was required to forego several significant constitutional rights enjoyed by free Americans. Further, our judicial history regarding the treatment of false imprisonment claims makes it abundantly clear that an imprisonment may occur outside of the walls of a prison. We find that the confinement that inmates experience in the ISP constitutes "imprisonment" under Mississippi's wrongful conviction compensation statutes. Inmates who have served time in the ISP are entitled to compensation for that time if they were wrongfully convicted.

CONCLUSION

¶14. We find that a person who serves time in Mississippi's Intensive Supervision Program (ISP) is entitled to compensation if wrongfully convicted. Tipton was wrongfully convicted, and he was sentenced to serve time in the Mississippi Department of Corrections and ISP. Mississippi Code Section 11-44-3 permits compensation for wrongful conviction and imprisonment. Until now, the MDOC and the State of Mississippi saw no difference between serving time under house arrest and serving time in prison. Tipton's liberties were severely restricted while he was in the ISP, and his status as a prisoner in the MDOC did not change while under house arrest. We find that he is entitled to compensation under Mississippi Code Section 11-44-3 for his time served in the ISP. Accordingly, we reverse the trial court's grant of summary judgment in favor of the State and render judgment in favor of Tipton.

¶15. **REVERSED AND RENDERED.**

WALLER, C.J., DICKINSON, P.J., CHANDLER AND KING, JJ., CONCUR. COLEMAN, J., DISSENTS WITH SEPARATE WRITTEN OPINION JOINED BY RANDOLPH, P.J., LAMAR AND PIERCE, JJ.

COLEMAN, JUSTICE, DISSENTING:

¶16. I would hold that Mississippi Code Sections 11-44-1 to -7 do not entitle Tipton to compensation for being placed in the Intensive Supervision Program, commonly known as house arrest. I am of the opinion that, as a matter of law, house arrest does not equate to incarceration, and incarceration is one necessary requirement for receiving compensation. Therefore, with respect, I dissent.

¶17. "It is not the function of the court to determine and announce what, in its judgment, [a] statute should provide, but to ascertain, if there be ambiguity in its terms, what it does provide." ***Russell v. State***, 94 So. 2d 916, 921 (1957). "Whether the statute is ambiguous, or not, the ultimate goal of this Court in interpreting a statute is to discern and give effect to the *legislative intent*." ***City of Natchez, Miss. v. Sullivan***, 612 So. 2d 1087, 1089 (Miss. 1992) (citing ***Anderson v. Lambert***, 494 So. 2d 370, 372 (Miss. 1986)) (emphasis added). The majority states that the purpose of compensation statutes is to compensate innocent persons who have been uniquely victimized. The majority's statement stops short. The purpose of the compensation statute is to compensate those who "have been uniquely victimized, [who] *have distinct problems reentering society* . . . ." Miss. Code Ann. § 11-44-1 (Rev. 2012) (emphasis added). Mississippi Code Sections 11-44-1 to -7 create a statutory scheme designed to compensate "innocent persons who have been wrongly convicted of felony crimes and subsequently *imprisoned*." Miss. Code Ann. § 11-44-1 (Rev. 2012)

(emphasis added). According to Section 11-44-1, compensation addresses "the substantial horror of being *imprisoned* for a crime one did not commit." *Id.* (emphasis added). In my opinion, the clear intent is to compensate those who have been victimized by being unable to have regular contact with the free world by being imprisoned.[8]

¶18. "If the words of a statute are clear and unambiguous, the Court applies the plain meaning of the statute and refrains from using principles of statutory construction." ***Lawson v. Honeywell Int'l, Inc.***, 75 So. 3d 1024, 1027 (¶ 7) (Miss. 2011). In order to be eligible for compensation, the Legislature states that the claimant must be "sentenced to a term of imprisonment," and the claimant must be "wrongfully convicted *and incarcerated*." Miss. Code Ann. § 11-44-7 (Rev. 2012) (emphasis added). Although I am in agreement with the majority that house arrest is a form of confinement, Mississippi legislation and case law have made it clear that there are different levels of confinement, and compensation was meant for offenders, as the plain language of the statute states, who were incarcerated or, alternatively, imprisoned. With respect to the majority, I cannot read the statute to provide compensation for any lesser form of confinement.

¶19. Mississippi Code Section 47-5-1003 defines the "intensive supervision program" as "*an alternative* to incarceration." Miss. Code Ann. § 47-5-1003 (Supp. 2014) (emphasis added). The Mississippi Legislature defined house arrest as "confinement of a person . . . to his place of residence . . . ." Miss. Code Ann. § 47-5-1001 (Supp. 2014). Under house arrest, the Legislature has allowed for "approved absences from the home" which include but

[8]Because the question before us centers squarely on statutory law, I respectfully disagree that the common-law tort of false imprisonment provides any relevant guidance.

are not limited to absence for employment, seeking employment, medical treatment, schooling, community service related work, and for other compelling reasons. Miss. Code Ann. § 47-5-1005 (Supp. 2014).

¶20. The majority relies on ***Lewis v. State***, 761 So. 2d 922 (Miss. Ct. App. 2000), a Court of Appeals case that held that house arrest is a form of confinement; therefore, moving an offender from house arrest to the "general prison population" is a "reclassification" that does not require a hearing. ***Id.*** at 923; *see also* ***Johnson v. State***, 77 So. 3d 1152, 1154 (Miss. Ct. App. 2012); ***Brown v. Miss. Dep't of Corr.***, 906 So. 2d 833, 835 (Miss. Ct. App. 2004), *overruled on other grounds by* ***Johnson***, 77 So. 3d at 1154. The majority is correct. House arrest is one form of confinement, but it is not the only form, the most severe form, or the form that the Legislature seeks to address with the compensation statutes.

¶21. We are not bound by decisions of the Court of Appeals, ***Stewart v. Stewart***, 864 So. 2d 934, 937 (Miss. 2003), but I nevertheless address ***Lewis*** because I perceive flaws in the majority's application of it to the case before us today. The ***Lewis*** Court considered the issue of whether an offender moved from house arrest to the general prison population should enjoy the due process rights afforded when one's "probation, parole or conditional release has been unlawfully revoked." ***Lewis***, 761 So. 2d at 923 (citing Miss. Code Ann. § 99-39-5(1)(g) (Supp. 1999)). The court determined that, since the offender "would remain under a form of confinement" under the jurisdiction of the Mississippi Department of Corrections, the post-conviction relief provisions of Section 99-39-5(1)(g) were not available to the claimant. ***Lewis***, 761 So. 2d at 923. The ***Lewis*** Court based its holding on the Legislature's wording in Section 47-5-1003, where the statute states:

> (3) To protect and to ensure the safety of the state's citizens, any offender who violates an order or condition of the intensive supervision program may be arrested by the correctional field officer and placed in the actual custody of the Department of Corrections. Such offender *is under the full and complete jurisdiction of the department* and subject to removal from the program by the classification hearing officer.

Miss. Code Ann. § 47-5-1003 (emphasis added); *see* ***Lewis***, 761 So. 2d at 923. ***Lewis*** cites the above quoted statute for the point that the offender remains under Department of Corrections jurisdiction; therefore, the offender is still confined and not released or able to claim post conviction relief. In other words, the court determined that "reclassification" of an offender within the jurisdiction of the Department to a different form of confinement did not constitute probation, parole, or conditional release.

¶22. Even were we bound to follow it, the ***Lewis*** Court's holding makes it clear that there are different "classes" of confinement. The court tells us Lewis was reclassified; in order to reclassify an offender, there must be different classes of confinement. Moreover, the court stated multiple times house arrest is a "form of confinement." Thus, there are different forms, or in the alternative, different classes of confinement. It follows that house arrest is one form of confinement and incarceration is another form of confinement. Because the compensation statute by its terms applies only to the most restrictive of the forms of confinement, imprisonment, the ***Lewis*** Court's exploration of the meaning of confinement for reclassification purposes, even if it were binding precedent, has no application to the case *sub judice*.

¶23. The Legislature states that removal from house arrest requires the offender to be "arrested by the correctional field officer and placed in the actual custody of the Department

of Corrections." Miss. Code Ann. § 47-5-1003 (Rev. 2011). Therefore, under the plain meaning of the statute, the offender becomes *more* confined when moved to prison, so much so, that the offender must be "arrested" and "placed in the actual custody" of the Department. In other words, the offender is "reclassified" to a more intensive "form of confinement" or a higher level of confinement. *See* ***Lewis***, 761 So. 2d at 923. Therefore, following the reasoning of ***Lewis***, Lewis was never released and was never able to claim relief under post conviction relief. He remained confined, but undeniably, Lewis became more confined, or in other words, incarcerated when moved from house arrest to prison.

¶24. Comparing the instant case to ***Lewis*** further highlights the distinguishing factors between the cases. Tipton compares house arrest with incarceration, arguing that house arrest is an alternative form of incarceration; essentially, he argues they are basically one and the same. ***Lewis*** provides little, if any, support for Tipton's argument. ***Lewis*** stops short of defining house arrest as incarceration. Outside of echoing the Legislature that house arrest is a form of confinement, ***Lewis*** simply does not compare house arrest to incarceration, nor use the term incarceration to define house arrest, as doing so would be outside the issues presented. The court was asked to compare house arrest with parole, probation, or conditional release for purposes of Department of Corrections classifications, and the court concluded that house arrest was not parole, probation, or conditional release because Lewis was under Department jurisdiction.

¶25. Ironically, in his criminal appeal, Tipton – with success – utilized the above-described reasoning regarding the meaning of incarceration. ***Tipton v. State***, 41 So. 3d 679, 680 (Miss. 2010). The majority distinguishes Tipton's criminal appeal by stating "Tipton's *criminal*

appeal confronted an entirely different issue than the *civil* suit now before us." (Maj. Op. ¶12) In Tipton's criminal appeal, the Court agreed with Tipton that "house arrest and incarceration services cannot be synonymous because Mississippi Code Section 47-5-1003(1) defines intensive supervision, commonly known as house arrest, as a program that may be used as an alternative to incarceration." ***Tipton***, 41 So. 3d at 682. In other words, the intensive supervision program or house arrest, although a form of confinement, is not similar enough to incarceration in prison for the program to qualify as an "incarceration service." Without question, Tipton takes a position directly opposing the position he successfully advanced in his criminal appeal. I find it disturbing, to put it mildly, that the Court allows him to succeed.

¶26. The Court has defined the doctrine of judicial estoppel, stating that it "precludes a party from asserting a position, benefitting from that position, and then, when it becomes more convenient or profitable, retreating from that position later in the litigation." ***Clark v. Neese***, 131 So. 3d 556, 560 (Miss. 2013), *reh'g denied* (Feb. 20, 2014) (internal citations omitted). The goal of the doctrine is "to protect the judicial system and applies where intentional self-contradiction is being used as a means of obtaining unfair advantage in a forum provided for suitors seeking justice." ***Id.*** The three-part test for judicial estoppel states that it applies if: "(1) the position is inconsistent with one previously taken during litigation, (2) a court accepted the previous position, and (3) the party did not inadvertently take the inconsistent positions." ***Id.*** (citing ***Kirk v. Pope***, 973 So. 2d 981, 991 (Miss. 2007)).

¶27. Given that the Court has stated judicial estoppel applies generally to a suit and given that the goal of judicial estoppel is "to protect the judicial system and applies where

intentional self-contradiction is being used as a means of obtaining unfair advantage," I would hold that in the instant case, judicial estoppel applies. ***Clark***, 131 So. 3d at 560. Tipton should be barred from making a self-contradicting argument where, in his criminal appeal, the argument reversed his conviction, and here, under the majority's reasoning, the contradicting argument would give him compensation for the time he spent under house arrest while he was appealing the very same criminal conviction.

¶28. Under close review of ***Lewis***, the statutes at issue, and the doctrine of judicial estoppel, I would hold that Tipton is not entitled to relief under Sections 11-44-1 to -7, or alternatively, that Tipton is barred by judicial estoppel from making a self-contradicting argument that the Court accepted once to his great benefit.

RANDOLPH, P.J., LAMAR AND PIERCE, JJ., JOIN THIS OPINION.