

**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**NO. 2018-CA-00607-COA**

**JUSTIN EARL FLOWERS**

**APPELLANT**

**v.**

**STATE OF MISSISSIPPI**

**APPELLEE**

DATE OF JUDGMENT: 04/11/2018  
TRIAL JUDGE: HON. CHRISTOPHER LOUIS SCHMIDT  
COURT FROM WHICH APPEALED: HARRISON COUNTY CIRCUIT COURT,  
FIRST JUDICIAL DISTRICT  
ATTORNEY FOR APPELLANT: JIM L. DAVIS III  
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL  
BY: ALICIA MARIE AINSWORTH  
NATURE OF THE CASE: CIVIL - POST-CONVICTION RELIEF  
DISPOSITION: AFFIRMED - 06/04/2019  
MOTION FOR REHEARING FILED:  
MANDATE ISSUED:

**BEFORE BARNES, C.J., TINDELL AND McCARTY, JJ.**

**BARNES, C.J., FOR THE COURT:**

¶1. On December 20, 2012, Justin Flowers was charged by a bill of information with committing grand larceny in violation of Mississippi Code Annotated section 97-17-41 (Rev. 2006). He entered a guilty plea on November 18, 2013. Withholding the acceptance of the guilty plea, adjudication of guilt, and imposition of a sentence pursuant to Mississippi Code Annotated section 99-15-26(1) (Supp. 2008), the Harrison County Circuit Court sentenced Flowers to two years of non-adjudicated probation pending successful completion of the

probation conditions.<sup>1</sup>

¶2. On August 17, 2015, Flowers appeared before the circuit court on a petition for revocation of probation filed by the Mississippi Department of Corrections (MDOC). After Flowers confessed to the allegations in the petition, the court revoked his probation and sentenced him to ten years in the custody of the MDOC, with ten years suspended for successful completion of the Therapeutic Drug and Alcohol Program. The court retained jurisdiction under Mississippi Code Annotated section 47-7-47 (Rev. 2015). After Flowers completed the drug program, the circuit court resentenced Flowers to ten years in the custody of the MDOC, with ten years suspended and three years of post-release supervision on June 28, 2016. Flowers filed a motion to set aside or correct the judgment on August 21, 2017, which the court denied.<sup>2</sup> Flowers did not appeal this decision.

¶3. The circuit court revoked Flowers's post-release supervision on October 23, 2017,<sup>3</sup> and sentenced him to his original term of ten years in the custody of the MDOC, with credit for time served but with no portion of the sentenced suspended. On November 1, 2017, Flowers filed a motion for reconsideration, or in the alternative, a petition for post-conviction

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<sup>1</sup> See Miss. Code Ann. § 99-15-26(1) (Rev. 2007) (providing that upon entry of a guilty plea by a criminal defendant, a circuit court "shall be empowered . . . to withhold acceptance of the plea and sentence thereon pending successful completion of such conditions as may be imposed by the court" pursuant to subsection (2) of the statute).

<sup>2</sup> The circuit court's June 28, 2016 order and Flowers's August 21, 2017 motion are not in the record but are referenced in the circuit court's findings of fact in a subsequent April 11, 2018 final order.

<sup>3</sup> Flowers was charged with several violations of the terms of his probation, including but not limited to, two arrests for driving under the influence and failure to report to the MDOC since December 2016.

relief (PCR), contending that at the time of his adjudication of guilt, the sentence for grand larceny was five years, not ten.<sup>4</sup> On April 11, 2018, the circuit court entered an order, finding that it “now lacks jurisdiction over the matter” because Flowers’s prior August 21, 2017 motion to reconsider was filed more than a year after the June 28, 2016 order, which “was well outside the term of court.” With regard to Flowers’s PCR motion, the court concluded that the argument regarding sentencing was without merit.

¶4. Flowers appeals the court’s judgment. Although we agree that the circuit court lacked jurisdiction to reconsider or amend Flowers’s June 28, 2016 sentence, the court had jurisdiction to consider Flowers’s claim of an illegal sentence in his November 1, 2017 alternative PCR motion. Finding that the circuit court did not err in sentencing Flowers under the prior version of the statute, we affirm the denial of Flowers’s motion.

### DISCUSSION

¶5. The State does not address the issue of the circuit court’s jurisdiction, and Flowers does not challenge the court’s determination that it lacked jurisdiction to reconsider his sentence as a separate and distinct issue, except to aver that he “file[d] his motion to reconsider the sentence within the appropriate ten (10) days.” This issue of jurisdiction is further complicated by omissions in the record and factual inconsistencies and omissions in Flowers’s brief.<sup>5</sup> Based on the court’s findings of fact in its April 2018 order, we agree that

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<sup>4</sup> Section 97-17-41(1) was amended in July 2014 to increase the stolen items’ value from \$500 to \$1,000 and to reduce the maximum sentence from ten years to five years.

<sup>5</sup> Flowers erroneously states in his brief that the court determined it lacked jurisdiction over the *August 17, 2015* order. That is factually incorrect; the court specifically stated that it had retained jurisdiction over that order. Flowers makes no mention of his

the court did not have jurisdiction to reconsider its June 28, 2016 order, as Flowers’s motion to reconsider was untimely filed.<sup>6</sup> However, Flowers’s November 1, 2017 PCR motion was not time-barred, and the court had jurisdiction to consider the merits of his claim.<sup>7</sup>

¶6. In the PCR motion, Flowers argued that the circuit court erred in sentencing him to ten years under the prior version of section 97-17-41(1). At the time of the offense and the circuit court’s non-adjudication order, section 97-17-41(1) provided:

Every person who shall be convicted of taking and carrying away, feloniously, the personal property of another, of the value of five Hundred Dollars (\$500.00) or more, shall be guilty of grand larceny, and shall be imprisoned in the Penitentiary for a term not exceeding ten (10) years; or shall be fined not more than Ten Thousand Dollars (\$10,000), or both. The total value of property taken and carried away by the person from the single victim shall be aggregated in determining the gravity of the offense.

The grand-larceny statute was amended in July 2014—before the circuit court’s adjudication of guilt on August 18, 2015—to provide in pertinent part:

Any person who shall be convicted of taking and carrying away, feloniously, the personal property of another, of the value of One Thousand Dollars (\$1,000.00) or more, but less than Five Thousand Dollars (\$5,000.00), shall be guilty of grand larceny, and shall be imprisoned in the Penitentiary *for a term*

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August 21, 2017 order or the June 28, 2016 order. However, he does not dispute the court’s factual findings.

<sup>6</sup> See *Ducote v. State*, 970 So. 2d 1309, 1313 (¶7) (Miss. Ct. App. 2007) (“[O]nce a case has been terminated and the term of court ends, a circuit court is powerless to alter or vacate its judgment, in the absence of a statute authorizing modification of a sentence,” unless a motion is pending at the end of the court’s term under Mississippi Code Annotated section 11-1-16, or the court retains jurisdiction under section 47-7-47.) (internal quotations and citation omitted).

<sup>7</sup> See Miss. Code Ann. § 99-39-5(2) (Rev. 2015) (providing that a PCR motion challenging a guilty plea must be filed within three years of the entry of the judgment of conviction).

*not exceeding five (5) years*; or shall be fined not more than Ten Thousand Dollars (\$10,000.00), or both.

(Emphasis added). The circuit court denied Flowers’s relief, finding that “Mississippi law is clear that a lower [c]ourt may not retroactively apply amendments to the elements of a criminal statute.” Reviewing a denial of a PCR motion for abuse of discretion, this Court “will only reverse if the [circuit] court’s decision is clearly erroneous.” *Hughes v. State*, 106 So. 3d 836, 838 (¶4) (Miss. Ct. App. 2012) (citing *Crosby v. State*, 16 So. 3d 74, 77 (¶5) (Miss. Ct. App. 2009)). Questions of law are reviewed de novo. *Id.* (citing *Williams v. State*, 872 So. 2d 711, 712 (¶2) (Miss. Ct. App. 2004)).

¶7. We find no error in the trial court’s findings. In *Wilson v. State*, 194 So. 3d 855 (Miss. 2016), the Mississippi Supreme Court considered the argument now raised by Flowers. Randy Wilson committed the crime of receiving stolen property with a value over \$500 on April 2, 2012. *Id.* at 859 (¶7). At the time of his crime and indictment, the statute provided that, in order to be guilty, the stolen property must be valued at \$500 or more; the maximum sentence was ten years. *Id.* at 867 (¶40) (citing Miss. Code Ann. § 97-17-70(3) (Rev. 2006)). Prior to Wilson’s trial, the Legislature amended section 97-17-70 to provide that, in order to be guilty, the value of the stolen property must be \$1,000 or more; the maximum sentence was five years. *Wilson*, 194 So. 3d at 867 (¶40) (citing Miss. Code Ann. § 97-17-70(4) (Rev. 2014)). Like Flowers, Wilson argued he should have been sentenced “under the newer, more-lenient version” of the statute. *Id.* at (¶41). The supreme court concluded that Mississippi Code Annotated section 99-19-1 (Rev. 2015) “clearly requires the trial court to sentence an offender under a sentencing statute in place at the time of the

crime”; therefore, the trial court properly sentenced Wilson to ten years. *Id.* at 874 (¶61). A few months later, the supreme court applied *Wilson* to section 97-17-41(1), finding that the circuit court properly sentenced the defendant to the “version of the grand-larceny statute that was in place at the time the crime was committed.” *Walters v. State*, 206 So. 3d 524, 531 (¶20) (Miss. 2016).

¶8. *Wilson* and *Walters* constitute precedent that this Court is bound to follow. Only two months after *Wilson*, this Court addressed a nearly identical factual scenario to the one before us on appeal in *Nations v. State*, 199 So. 3d 1265 (Miss. Ct. App. 2016). Justine Nations was convicted of grand larceny under section 97-17-41 in April 2015. *Id.* at 1267 (¶1). At the time of the offense, the prior version of the statute was still in effect. *Id.* at 1275 (¶32). Upon her conviction in April 2015, the circuit court sentenced Nations to ten years. *Id.* at 1268-69 (¶¶6, 11). Nations argued on appeal that the trial court should have sentenced her to five years under the amended statute. *Id.* at 1275 (¶32). Citing *Wilson*, we held that “the circuit court properly sentenced Nations to ten years’ imprisonment under the version of section 97-17-41 in effect at the time of her crime.” *Id.* at 1275 (¶33). As in *Nations*, we find that the circuit court did not err in imposing the ten-year sentence under the prior version of section 97-17-41 and affirm the denial of Flowers’s PCR motion.

¶9. **AFFIRMED.**

**CARLTON AND J. WILSON, P.JJ., GREENLEE, WESTBROOKS, TINDELL,  
McDONALD, LAWRENCE, McCARTY AND C. WILSON, JJ., CONCUR.**