

**IN THE COURT OF APPEALS 12/17/96**

**OF THE**

**STATE OF MISSISSIPPI**

**NO. 95-KA-01125 COA**

**JOE MITCHELL THOMAS**

**APPELLANT**

**v.**

**STATE OF MISSISSIPPI**

**APPELLEE**

**PER CURIAM AFFIRMANCE MEMORANDUM OPINION**

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND  
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. GRAY EVANS

COURT FROM WHICH APPEALED: SUNFLOWER COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

CLEVE MCDOWELL

ATTORNEYS FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: CHARLES W. MARIS JR.

DISTRICT ATTORNEY: FRANK CARLTON

NATURE OF THE CASE: CRIMINAL: FELONY, WEIGHT OF EVIDENCE

TRIAL COURT DISPOSITION: BURGLARY OF A DWELLING: SENTENCED TO 10 YRS IN  
THE MDOC AS A HABITUAL OFFENDER

BEFORE BRIDGES, P.J., COLEMAN, AND PAYNE, JJ.

PER CURIAM:

Joe Mitchell Thomas was convicted of burglary of a dwelling as a habitual offender and sentenced to ten years in the Mississippi Department of Corrections. Aggrieved by this conviction, he appeals arguing that the jury verdict was against the weight of the evidence. Finding no assignment of error, we affirm the lower court.

## ARGUMENT AND DISCUSSION OF THE LAW

### I. WHETHER THE JURY VERDICT WAS AGAINST THE WEIGHT OF THE EVIDENCE?

Although the Appellant is appealing the weight of the evidence, he seems to be arguing both weight and sufficiency issues. Because of this, we will address whether the jury verdict was against both the weight of the evidence and its sufficiency.

First, the standard of review for a challenge to the sufficiency of the evidence is stated in *McClain v. State*:

In appeals from an overruled motion for JNOV, the sufficiency of the evidence as a matter of law is viewed and tested in a light most favorable to the State. The credible evidence . . . consistent with guilt must be accepted as true. The prosecution must be given the benefit of all favorable inferences that may be reasonably drawn from the evidence. Matters regarding the weight and credibility of the evidence are to be resolved by the jury. We are authorized to reverse only where, with respect to one or more of the elements of the offense charged, the evidence so considered is such that reasonable and fair-minded jurors could only find the accused not guilty.

*McClain v. State*, 625 So. 2d 774, 778 (Miss. 1993) (citations omitted). In the case at hand, at no time during the trial did Thomas ever specify any alleged deficiency in the State's case, and he failed to move for a directed verdict. Because of this, we find this proposition to be without merit.

Next, as stated many times by the Mississippi Supreme Court, the standard of review for a challenge to the weight of the evidence is found in *Thornhill v. State*:

In determining whether or not a jury verdict is against the overwhelming weight of the evidence, this Court must accept as true the evidence which supports the verdict and will reverse only when it is convinced that the circuit court has abused its discretion.

*Thornhill v. State*, 561 So. 2d 1025, 1030 (Miss. 1989), *see Isaac v. State*, 645 So. 2d 903, 907 (Miss. 1994) (citations omitted).

In the case sub judice, this Court must accept as true the evidence supporting the guilty verdict. Evidence was presented that proved Thomas had indeed committed the burglary, to which the jury agreed. There is no evidence that the lower court abused its discretion; therefore, we again affirm the lower court's ruling.

Although we are unsure if Thomas seeks a new trial or a complete discharge, in either event, he is entitled to neither. We find both arguments to be without merit, and we affirm the lower court.

**THE JUDGMENT OF THE SUNFLOWER COUNTY CIRCUIT COURT OF CONVICTION OF BURGLARY OF A DWELLING AND SENTENCE OF TEN YEARS AS A HABITUAL OFFENDER IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED WITH ALL COSTS TO BE TAXED TO SUNFLOWER COUNTY.**

**FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, DIAZ, KING, McMILLIN, PAYNE, AND SOUTHWICK, JJ., CONCUR.**