

Serial: 248202

App'x A

IN THE SUPREME COURT OF MISSISSIPPI

No. 2023-M-00717

GEORGE LEE BUTLER***Petitioner***

v.

STATE OF MISSISSIPPI***Respondent*****ORDER**

This matter is before the panel of King, P.J., Ishee and Griffis, JJ., on the Application for Leave to Proceed in the Trial Court filed pro se by George Lee Butler. The mandate in Butler's direct appeal issued in 2009. Unless excepted, Butler's petition is barred as untimely. Miss. Code Ann. § 99-39-5 (Rev. 2020). After due consideration, the panel finds that Butler has presented no arguable basis for his claims and that the petition should be denied. See *Means v. State*, 43 So. 3d 438, 442 (Miss. 2010).

IT IS THEREFORE ORDERED that the Application for Leave to Proceed in the Trial Court filed by George Lee Butler is denied.

SO ORDERED.

DIGITAL SIGNATURE**Order#:** 248202**Sig Serial:** 100007491**Org:** SC**Date:** 08/22/2023

David M. Ishee, Justice

~~Exhibit B~~ 1

App'x B

IN THE CIRCUIT COURT OF TUNICA COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VS.

NO. 2008-0040

GEORGE LEE BUTLER

DEFENDANT

JUDGMENT AND SENTENCE

This cause coming on this day to be heard, it being a regular day of the MARCH/APRIL 2008 Term of this court, and the District Attorney who prosecutes for and on behalf of the State and the Defendant, GEORGE BUTLER, in his own proper person and represented by counsel being present in open court, and the cause being called, the Court finds and adjudges as follows:

That the Defendant having heretofore been indicted and arraigned and having entered a plea of not guilty to the charge of BURGLARY OF A DWELLING as shown in the indictment in this cause, and the case having come on for trial, whereupon both the State and the Defendant announcing ready for trial, came a jury of good and lawful citizens of Tunica County, Mississippi, who were accepted by both the State and the Defendant, and having been specially sworn to try the issue joined and after hearing the evidence, instructions of the Court and argument of counsel, retired to consider their verdict and presently returned into open court with the following verdict:

"We, the jury, find the defendant guilty of burglary of a dwelling."

That pursuant to judgment previously entered in this cause, the Court adjudges the Defendant, GEORGE LEE BUTLER, to be guilty of the crime of BURGLARY OF A DWELLING. The case was then recessed for

FILED
APR 18 2008
TUNICA COUNTY MISS.
ARON BRANBERRY, CIRCUIT CLERK
[Signature]

~~EXHIBIT A~~

further hearing before the Court without a jury on the charges set forth in the indictment involving enhanced punishment as provided by Section 99-19-81, Mississippi Code 1972.

The Court now has the Presentence Investigation Report and the Victim Impact Statement which have been furnished to the Defendant, GEORGE LEE BUTLER, and his counsel. Having conducted the hearing, the Court finds that the evidence is uncontradicted and undisputed that the Defendant, GEORGE LEE BUTLER, has been convicted of a felony in this case, has been previously convicted six (6) times of felony crimes in the State of Mississippi, upon charges separately brought and arising out of separate incidents at different times, and on each of said previous charges, the Defendant was sentenced to separate terms of one year or more in the State of Mississippi penal institutions; and the Court, therefore, finds that the aforesaid Section 99-19-81 is applicable to the sentencing of the Defendant, GEORGE LEE BUTLER, for the crime of BURGLARY OF A DWELLING now before the Court.

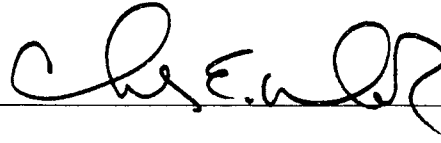
IT IS, THEREFORE, ORDERED AND ADJUDGED that the Defendant, GEORGE LEE BUTLER, be and he is hereby sentenced to serve a term of TWENTY-FIVE (25) YEARS in an institution under the supervision and control of the Mississippi Department of Corrections for the crime of BURGLARY OF A DWELLING, and it is further ordered that the sentence of TWENTY-FIVE (25) YEARS shall not be reduced or suspended nor shall the Defendant be eligible for parole or probation during the term of said sentence.

~~EXHIBIT 13~~

IT IS FURTHER ORDERED AS FOLLOWS:

- 1) THAT THE SENTENCE IMPOSED IN THIS CAUSE SHALL RUN CONSECUTIVE TO ANY AND ALL SENTENCES PREVIOUSLY IMPOSED.

ORDERED AND ADJUDGED this the 15TH day of APRIL, 2008.



JUDGE OF THE CIRCUIT COURT

:mkd(trl&sng)/WB

STATE OF MISSISSIPPI

App'x C

In the Circuit Court of Tunica County

Cause/Case No. 2008-0040

TO THE MISSISSIPPI DEPARTMENT OF CORRECTIONS: NOTICE OF CRIMINAL DISPOSITION

You are hereby notified that at the March/April/May 20 08 term of the Circuit Court, Judge Charles Webster presiding, the following disposition was imposed for the crime(s) hereinafter described:

- I.A. Disposition(s) Reported: ☒ Prisoner Commitment ☐ Suspended Sentence/Probation ☐ Revocation ☐ Acquittal ☐ Other Enter in § IV
(Check those which apply to all counts reported)
- A-1. Provisional Sentence: ☐ Non-Adjudication ☐ Sentenced Under RID ☐ Sentenced Under Shock Probation
☐ Bad Check Diversionary Program ☐ Restitution in _____ County
- B. Conviction as Result of: ☐ Guilty Plea ☐ Guilty Plea after _____ days of Commencement of Trial
☒ Jury Verdict after 1 days in Trial ☐ Revocation Hearing

II. Name: George Lee Butler Alias: _____
SSN: _____ Race: _____ Sex: _____ Date of Birth: _____
Last Known Residence: _____
Place of Birth: _____ Country of Citizenship: _____
Alien Registration/Immigration # A- FBI # _____

III. Count I Charge: Burglary of a Dwelling
Indicted Under MS Code§ 97-17-23 Sentenced Under MS Code§ 97-17-23
Count II Charge: _____
Indicted Under MS Code§ _____ Sentenced Under MS Code§ _____
Count III Charge: _____
Indicted Under MS Code§ _____ Sentenced Under MS Code§ _____

IV. Date of Sentence 4-15-2008 Credit for Time Served (ONLY for this/these charge[s]) _____ days
Sentence(s) imposed by Order: Count I 25 yrs. Count II _____ Count III _____
(Prior to any suspended portion)

☐ Check if reporting additional counts on reverse side

	Portion of Sentence to be served (Yrs/Mos)	Portion of Sentence Suspended (Yrs/Mos)	To be Served on Probation (Yrs/Mos)	Other/Method of Disposition <small>(Refer to legend on back of form)</small>
Count I	<u>25 yrs.</u>			<u>GLT</u>
Count II				
*Count III				

_____ sentence imposed _____ to run concurrent with _____
_____ to run consecutive to _____ any sentence previously imposed

Conditions/Designation of Sentence: ☐ Habitual ☐ Psychological/Psychiatric ☐ Alcohol/Drug Treatment/Testing ☐ Other _____

V. Dates Confined _____ to _____
in Jail _____ to _____
[on this/these _____ to _____
charge(s) only] _____ to _____
Released on Bond Pending Appeal _____ to _____
Defendant Currently Housed in: _____ to _____

VI. Fine \$ _____ Indigent Fee \$ _____ Restitution \$ _____
Court Costs \$ 250.00 Attorney Fees \$ _____ Other Fees \$ _____
Conditions of Payment: _____

Send Prisoner Commitments, Provisional Sentence

Orders and Revocation Orders to:

Director of Records INS Liaison
MDOC MS Supreme Court
P.O. Box 88550 P.O. Box 117
Pearl, MS 39208-8550 Jackson, MS 39205-0117

Send Suspended Sentence/Probation Notices, Provisional

Sentence Orders and Revocation Orders to:

Data Operations INS Liaison
MDOC MS Supreme Court
723 North President St. P.O. Box 117
Jackson, MS 39202-3097 Jackson, MS 39205-0117

Send Acquittal/Other Notices to: INS Liaison at above address

Sharon G. Reynolds
Circuit Clerk

By: [Signature]
Date: April 24, 2008

MS Code Ann. §

SCMS Form CR 1/3/98

App'x D



KeyCite Yellow Flag - Negative Treatment

Unconstitutional or Preempted Prior Version's Validity Called into Doubt by *Graham v. Florida*, U.S., May 17, 2010



KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

West's Annotated Mississippi Code

Title 99. Criminal Procedure

Chapter 19. Judgment, Sentence, and Execution

Sentencing of Habitual Criminals

Miss. Code Ann. § **99-19-81**

§ **99-19-81**. Habitual criminals; maximum term

Effective: July 1, 2018

Currentness

Every person convicted in this state of a felony who shall have been convicted twice previously of any felony or federal crime upon charges separately brought and arising out of separate incidents at different times and who shall have been sentenced to separate terms of one (1) year or more in any state and/or federal penal institution, whether in this state or elsewhere, shall be sentenced to the maximum term of imprisonment prescribed for such felony unless the court provides an explanation in its sentencing order setting forth the cause for deviating from the maximum sentence, and such sentence shall not be reduced or suspended nor shall such person be eligible for parole or probation.

Credits

Laws 1976, Ch. 470, § 1, eff. January 1, 1977. Brought forward by Laws 2014, Ch. 457 (H.B. No. 585), § 79, eff. July 1, 2014. Amended by Laws 2018, Ch. 416 (H.B. No. 387), § 12, eff. July 1, 2018.

Relevant Notes of Decisions (8)

[View all 592](#)

Notes of Decisions listed below contain your search terms.

Validity

Habitual offender law Code 1972, § **99-19-81** does not violate prohibition against cruel and unusual punishment. *Bridges v. State* (Miss. 1986) 482 So.2d 1139. Sentencing And Punishment 1513

Construction with other statutes

There is no conflict between Code 1972, § **99-19-81** providing that sentence of habitual offenders not be reduced or suspended and that such persons not be eligible for parole or probation and Code 1972, § 47-5-138 providing that State Board of Corrections adopt rules and regulations dealing with earned time allowances to offenders. *Hardy v. State* (Miss. 1985) 473 So.2d 941. Prisons 244; Sentencing And Punishment 1873

---- Statutory citation, indictment

It was not necessary for State to specify in indictment which section of habitual criminal statute it was proceeding under; § 99-19-81, which provides for maximum sentence under applicable felony statute without benefit of a parole, pardon, or reduction, or § 99-19-83, which provides mandatory sentence of life imprisonment without benefit of parole, pardon, or reduction. *Ellis v. State* (Miss. 1985) 469 So.2d 1256. Sentencing And Punishment 1367

---- Prior convictions, indictment

Paragraph of indictment which charged grand larceny defendant as recidivist was sufficient to advise him that State sought enhanced punishment under Code 1972, § 99-19-81 in that it adequately advised defendant of specific crimes of which he had allegedly been previously convicted. *Perkins v. State* (Miss. 1986) 487 So.2d 791. Sentencing And Punishment 1367

---- Amendment, indictment

Where defendant's counsel stated that he knew well in advance of change of indictment under habitual criminal statute from § 99-19-81, which provides for maximum sentence under applicable felony statute, to § 99-19-83, which provides mandatory sentence of life imprisonment, and no request for continuance was made, trial court did not err in permitting State to amend indictment with respect to habitual criminal statute section on day of trial. *Ellis v. State* (Miss. 1985) 469 So.2d 1256. Sentencing And Punishment 1370

---- Separate incidents, prior convictions

Murder defendant's conviction as a habitual offender could be based on robbery and two kidnappings which took place following the completion of and apart and separate from murders which took place on the same day; murders and kidnappings occurred at different times and places and clearly were separate "incidents." Code 1972, § 99-19-81. *Nicolaou v. State* (Miss. 1988) 534 So.2d 168. Sentencing And Punishment 1308

Proceedings--In general

Cases involving habitual offenders statute are tried pursuant to rule entitled "Procedure for Proof of Prior Convictions under the Habitual Criminal Statute." Code 1972, § 99-19-81; Uniform Circuit Court Criminal Rule 6.04. *Adams v. State* (Miss. 1982) 410 So.2d 1332. Sentencing And Punishment 1355

---- Parole, sentence

Habitual offender sentenced under Section 99-19-81 who has not committed a violent crime under Section 97-3-2, and who obtains authorization by the appropriate judge, is eligible for parole consideration. Op.Atty.Gen. No. 2018-00287 Loper, September 21, 2018, 2018 WL 5115583.

Miss. Code Ann. § 99-19-81, MS ST § 99-19-81

The Statutes and Constitution are current with laws from the 2022 Regular Session effective through March 30, 2022. Some statute sections may be more current, see credits for details. The statutes are subject to changes provided by the Joint Legislative Committee on Compilation, Revision and Publication of Legislation.

97-17-23

Burglary of Dwelling

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

West's Annotated Mississippi Code
Title 97. Crimes
Chapter 17. Crimes Against Property
in General

AppxE

Miss. Code Ann. § 97-17-23

§ 97-17-23. Burglary; breaking and entering; home invasion; penalties

Currentness

(1) Every person who shall be convicted of breaking and entering the dwelling house or inner door of such dwelling house of another, whether armed with a deadly weapon or not, and whether there shall be at the time some human being in such dwelling house or not, with intent to commit some crime therein, shall be punished by commitment to the custody of the Department of Corrections for not less than three (3) years nor more than twenty-five (25) years.

(2) Every person who shall be convicted of violating subsection (1) under circumstances likely to terrorize any person who is actually occupying the house at the time of the criminal invasion of the premises shall be punished by imprisonment in the custody of the Department of Corrections for not less than ten (10) years nor more than twenty-five (25) years.

Credits

Laws 1996, Ch. 519, § 1, eff. from and after passage (approved April 11, 1996. Amended by Laws 2008, Ch. 307, § 1, eff. July 1, 2008.

Notes of Decisions containing your search terms (0)

View all 591

Miss. Code Ann. § 97-17-23, MS ST § 97-17-23

The Statutes and Constitution are current with laws from the 2022 Regular Session effective through Feb. 2, 2022. Some statute sections may be more current, see credits for details. The statutes are subject to changes provided by the Joint Legislative Committee on Compilation, Revision and Publication of Legislation.

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97-17-33

Other Burglary

West's Annotated Mississippi Code
Title 97. Crimes
Chapter 17. Crimes Against Property
in General

Miss. Code Ann. § ~~97-17-33~~

§ ~~97-17-33~~. Burglary; other buildings, motor vehicles and vessels

Currentness

(1) Every person who shall be convicted of breaking and entering, in the day or night, any shop, store, booth, tent, warehouse, or other building or private room or office therein, water vessel, commercial or pleasure craft, ship, steamboat, flatboat, railroad car, automobile, truck or trailer in which any goods, merchandise, equipment or valuable thing shall be kept for use, sale, deposit, or transportation, with intent to steal therein, or to commit any felony, or who shall be convicted of breaking and entering in the day or night time, any building within the curtilage of a dwelling house, not joined to, immediately connected with or forming a part thereof, shall be guilty of burglary, and imprisoned in the penitentiary not more than seven (7) years.

(2) Any person who shall be convicted of breaking and entering a church, synagogue, temple or other established place of worship with intent to commit some crime therein shall be punished by imprisonment in the penitentiary not more than fourteen (14) years.

Credits

Laws 1940, Ch. 243, § 1; Laws 1960, Ch. 241, § 1; Laws 1989, Ch. 347, § 1; Laws 1997, Ch. 473, § 4, eff. from and after passage (approved March 27, 1997).

Notes of Decisions containing your search terms (0)

[View all 372](#)

Miss. Code Ann. § ~~97-17-33~~, MS ST § ~~97-17-33~~

The Statutes and Constitution are current with laws from the 2022 Regular Session effective through Feb. 2, 2022. Some statute sections may be more current, see credits for details. The statutes are subject to changes provided by the Joint Legislative Committee on Compilation, Revision and Publication of Legislation.

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99-7-23

Motion To Quash

West's Annotated Mississippi Code
Title 99. Criminal Procedure
Chapter 7. **Indictment**

1 of 2

Miss. Code Ann. § 99-7-23

§ 99-7-23. Motions to quash

Currentness

App'x F

All objections to an **indictment** for any defect deors the face thereof, presenting an issue to be tried by the court, shall be taken by motion to quash the **indictment**, and not otherwise, within the time allowed for demurrer, and with the right to amend, as provided in the last preceding section.

Editors' Notes

Relevant Additional Resources

Additional Resources listed below contain your search terms.

CROSS REFERENCES

Amendments when variance found between matter stated in **indictment** and proof, see § 99-17-13.

RESEARCH REFERENCES

Encyclopedias

3A Encyclopedia of Mississippi Law § 24:32 (3d ed.), **Indictments**--Attacks and Demurrers.

UNITED STATES SUPREME COURT

Dismissal for failure of **indictment** to allege intent, reprosecution, see Lee v. U. S., U.S.Ind.1977, 97 S.Ct. 2141, 432 U.S. 23, 53 L.Ed.2d 80.

Relevant Notes of Decisions (20)

View all 23

Notes of Decisions listed below contain your search terms.

Construction and application

Statutory provisions relating to demurrers to and motions to quash **indictments** held applicable to affidavits charging crime. Wampold v. State (Miss. 1934) 170 Miss. 732, 155 So. 350. Criminal Law 252

Purpose of motion

Function of motion to quash is to test the legality of an **indictment** for some defect not appearing on the face thereof, but neither a motion to quash or any other pretrial pleading can be employed to contest the sufficiency of the evidence to support

the **indictment**. State v. Grady (Miss. 1973) 281 So.2d 678. **Indictments** And Charging Instruments ¶ 965; **Indictments** And Charging Instruments ¶ 966(4)

Motion to quash was an appropriate remedy for challenging validity of **indictment** which grand jury had no legal power to return because based on books, papers, etc., obtained from accused by means of a subpoena duces tecum. State v. Bates (Miss. 1940) 187 Miss. 172, 192 So. 832. **Indictments** And Charging Instruments ¶ 966(1)

Grounds for denial of motion

Defendant's challenge to her **indictment** was not jurisdictional in nature, and thus she was procedurally barred from bringing it for first time on appeal; **indictment** clearly alleged both essential elements of the offense for which she was charged, aggravated driving while under the influence (DUI), and defendant's argument that the **indictment** should have described the facts and circumstances of the offense in greater detail did not call into question the jurisdiction of the circuit court. Darte v. State, 2018, 271 So.3d 733. Criminal Law ¶ 1139

Motion to quash **indictment** held properly denied where there was no offer of evidence by defendant when case was tried on merits in support of allegations. Smith v. State (Miss. 1930) 158 Miss. 355, 128 So. 891. **Indictments** And Charging Instruments ¶ 976(4)

Defects in indictment

Nonjurisdictional defects in the **indictment** may not be attacked for the first time on appeal absent a showing of cause and actual prejudice; rather, all such objections should be raised in a motion to quash the **indictment** filed prior to trial. Darte v. State, 2018, 271 So.3d 733. Automobiles ¶ 332

Sufficiency of supporting evidence

In deciding motion to quash **indictment** of defendant for conspiracy to commit election fraud, trial court erred in finding that there was substantial and credible evidence to support grand jury's action, inasmuch as trial court was prohibited from inquiring into evidence presented to grand jury and was restricted to determining whether or not grand jurors were subjected to improper influences. Hood v. State (Miss. 1988) 523 So.2d 302. **Indictments** And Charging Instruments ¶ 966(4)

Neither motion to quash nor any other pretrial pleading can be employed to test sufficiency of evidence to support **indictment**. State v. Peoples (Miss. 1986) 481 So.2d 1069. **Indictments** And Charging Instruments ¶ 966(4)

Sufficiency of accusation

Indictment charging perjury before grand jury was not deficient on ground that it failed to state the alleged offense that was being investigated; failure of **indictment** to name a particular offense was not unreasonable, since there were number of offenses that could have resulted from investigation of death of child. Smallwood v. State (Miss. 1991) 584 So.2d 733. Perjury ¶ 21

Perjury **indictment** which alleged that perjurious testimony involved material matters was not deficient for failing to set out facts showing materiality. Smallwood v. State (Miss. 1991) 584 So.2d 733. Perjury ¶ 25(6)

Variance between name on **indictment** and that on extradition papers did not require quashing of **indictment** where defendant was referred to differently by different persons. Stokes v. State (Miss. 1961) 240 Miss. 453, 128 So.2d 341. **Indictments** And Charging Instruments ¶ 968