

SUPREME COURT OF MISSISSIPPI

Brown v. State

102 So. 3d 1087 (Miss. 2012) · Decided December 13, 2012

SUMMARY

The Mississippi Supreme Court held that burglary of a dwelling is not per se a crime of violence for purposes of habitual-offender sentencing under Mississippi Code section 99-19-83. The State must provide evidence that the burglary involved an actual act of violence absent a legislative definition making burglary a crime of violence. The court reversed the Court of Appeals, vacated Brown’s life sentence, and remanded for resentencing while affirming his felony-escape conviction.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Dickinson, Presiding Justice; Carlson, Presiding Justice; Lamar, Justice; Kitchens, Justice; King, Justice; Randolph, Justice; Chandler, Justice; Pierce, Justice; Waller, Chief Justice
JURISDICTION	Mississippi
DECIDED	December 13, 2012
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Brown was convicted of felony escape and sentenced as a habitual offender under Mississippi Code section 99-19-83. The Mississippi Court of Appeals affirmed. The Mississippi Supreme Court granted certiorari to decide whether Brown's prior burglary conviction qualified as a crime of violence.
STANDARD OF REVIEW	De novo review applies because whether a prior conviction qualifies as a crime of violence under section 99-19-83 is a question of law.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Mark Kee Brown v. State of Mississippi

TOPICS

- sentencing
- statutory interpretation
- criminal procedure
- appellate procedure
- standard of review

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether burglary of a dwelling is per se a crime of violence for purposes of Mississippi Code section 99-19-83.
2. Whether the State must prove that a prior burglary involved actual violence or a threat of violence before the conviction may support habitual-offender sentencing under section 99-19-83.
3. Whether Brown's life sentence under section 99-19-83 could stand when the State presented no evidence that his prior burglary involved violence.

HOLDINGS

1. Burglary of a dwelling is not per se a crime of violence for purposes of Mississippi Code section 99-19-83.
2. Absent a legislative definition, the State must prove beyond a reasonable doubt that the prior crime involved violence or a threat of violence; potential or hypothetical violence is insufficient.
3. Brown's burglary conviction could not support habitual-offender sentencing under section 99-19-83 because the State presented no evidence that the burglary involved violence.

KEY QUOTATIONS

“Absent such a statute, or proof of an actual act of violence during the commission of a burglary, we hold that burglary of a dwelling is not a violent crime for purposes of Section 99-19-83.” (102 So. 3d at 1092)

“In the absence of a legislative definition of “crime of violence” under Section 99-19-83, the State must present some proof that the crime involved violence.” (102 So. 3d at 1093)

FACTUAL BACKGROUND

Brown was convicted of felony escape. To establish habitual-offender status under Mississippi Code section 99-19-83, the State relied on Brown's prior burglary indictment, guilty plea, and a statement that he entered a house and stole property. The State presented no evidence that the burglary involved actual violence or a threat of violence. The trial court treated the burglary conviction as a crime of violence and sentenced Brown to life imprisonment without eligibility for probation or parole.

PROCEDURAL HISTORY

A Harrison County grand jury indicted Brown for felony escape and habitual-offender status under section 99-19-81. The trial court allowed the State to amend the indictment to proceed under section 99-19-83, found that Brown's prior burglary conviction was a crime of violence, and imposed a life sentence without probation, parole, or early release. The Court of Appeals affirmed, but the Supreme Court reversed the Court of Appeals, affirmed the felony-escape conviction, vacated the habitual-offender sentence, and remanded for resentencing.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The life habitual-offender sentence is vacated, and the case is remanded to the Harrison County Circuit Court for resentencing consistent with the opinion. The felony-escape conviction remains affirmed.

CASES CITED

- Tipton v. State, 41 So. 3d 679, 682 (Miss. 2010)
- Arceo v. Tolliver, 19 So. 3d 67, 70 (Miss. 2009)
- City of Natchez v. Sullivan, 612 So. 2d 1087, 1089 (Miss. 1992)
- McLamb v. State, 456 So. 2d 743, 745-46 (Miss. 1984)
- Dunn v. United States, 442 U.S. 100, 112 (1979)
- Coleman v. State, 947 So. 2d 878, 881 (Miss. 2006)
- Watts v. State, 733 So. 2d 214, 240 (Miss. 1999)
- State v. Russell, 358 So. 2d 409 (Miss. 1978)
- Carter v. State, 334 So. 2d 376 (Miss. 1976)
- Terry v. State, 172 Miss. 303, 160 So. 574, 574 (1935)
- Robinson v. State, 364 So. 2d 1131, 1133 (Miss. 1978)
- King v. State, 527 So. 2d 641, 646 (Miss. 1988)
- Magee v. State, 542 So. 2d 228, 235 (Miss. 1989)
- Ashley v. State, 538 So. 2d 1181, 1184-85 (Miss. 1989)
- Hughes v. State, 892 So. 2d 203, 211 (Miss. 2004)
- Bumphis v. State, 405 So. 2d 116, 118 (Miss. 1981)
- Leasy v. Zollicoffer, 389 So. 2d 1378, 1380 (Miss. 1980)
- James v. State, 731 So. 2d 1135, 1137-38 (Miss. 1999)
- Roberts v. Mississippi Republican Party State Executive Committee, 465 So. 2d 1050, 1052 (Miss. 1985)
- Anderson v. State Farm Mutual Automobile Insurance Co., 555 So. 2d 733, 735 (Miss. 1990)
- Mississippi Insurance Guaranty Association v. Gandy, 289 So. 2d 677, 682 (Miss. 1973)
- Brown v. State, 102 So. 3d 1130 (Miss. Ct. App. Mar. 27, 2012)

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