

**IN THE SUPREME COURT OF MISSISSIPPI
NO. 2009-CA-00971**

KRISTI FULGHAM

APPELLANT

vs.

STATE OF MISSISSIPPI

APPELLEE

APPEAL FROM THE CIRCUIT COURT OF OKTIBBEHA COUNTY

BRIEF OF APPELLANT

JAMES W. CRAIG, MB [REDACTED]

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CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of this Court may evaluate possible disqualification or recusal.

1. Appellant, Kristi Fulgham;
2. Appellee, State of Mississippi, Attorney General, Jim Hood;
3. Appellee State of Mississippi, Assistant Attorney General, Charles W. Maris, Jr.;
4. Trial Court, Honorable James T. Kitchens, Jr., Circuit Judge, Oktibbeha County, Mississippi;
5. Stephanie L. Mallette, Trial Counsel for Kristi Fulgham;
6. Jim Lappan, Trial Counsel and Post-Conviction Counsel for Kristi Fulgham;
7. Forrest Allgood, Oktibbeha County District Attorney;
8. James W. Craig, Counsel for Appellant Kristi Fulgham;
9. R. Gregg Mayer, Counsel for Appellant Kristi Fulgham.

SO CERTIFIED, this the 18 day of November, 2009.



R. GREGG MAYER

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STATEMENT OF THE ISSUES

1. Whether a person, acting on the advice of counsel, can knowingly and voluntarily plead guilty to a criminal statute that is unconstitutionally vague.
2. Whether an attorney who advises her client to plead guilty to an unconstitutionally vague criminal statute has provided ineffective assistance of counsel.

STATEMENT OF THE CASE

Course of Proceedings and Statement of Facts. On July 25, 2005, Kristi Fulgham was indicted by the Oktibbeha County Grand Jury on two charges: (1) Count I - attempted escape and (2) Count II - furnishing an unauthorized device in violation of Miss. Code Ann. § 47-5-193. CP at 11. For Count II, Fulgham was indicted because she possessed a cell phone and charger. *Id.*

On January 24, 2006, Fulgham, on the advice of her attorney, pleaded guilty to both counts. CP at 12-19. On Count II, the Honorable James Kitchens sentenced Fulgham to eight (8) years to run consecutively with her four-year sentence for her conviction under Count I. *Id.*

On November 10, 2008, Fulgham timely filed a verified motion for post-conviction relief as to Count II. CP at 2-7. Fulgham argued that at the time of her plea Miss. Code Ann. § 47-5-193 was unconstitutionally vague, rendering the statute void. *Id.* Furthermore, Fulgham alleged she received ineffective assistance of counsel because her attorney advised Fulgham to plead guilty under the statute. *Id.*

On May 7, 2009, the Oktibbeha County Circuit Court denied Fulgham's post-conviction relief. CP at 43. The Court held that the statute was not unconstitutionally vague, and, alternatively, Fulgham had waived her right to challenge the constitutionality of the statute. The Court did not consider Fulgham's claim of ineffective assistance of counsel.

SUMMARY OF THE ARGUMENT

A person cannot knowingly and voluntarily plead guilty to an unconstitutionally vague criminal statute. In January 2006, Fulgham, acting on the advice of counsel, pleaded guilty to a violation of Miss. Code Ann. § 47-5-193. At that time, the statute prohibited the possession or furnishing of an “unauthorized electronic device.” Fulgham had possessed a cell phone and charger.

Not long after Fulgham’s conviction, a Mississippi court determined that the statute was unconstitutionally vague, particularly in light of a related statute that prohibited identical conduct but only as a misdemeanor. In addition, the Mississippi Legislature has since repeatedly amended § 47-5-193 – including to add “cell phone” as a separate prohibited item from “unauthorized electronic device”, and later to add “chargers” – in an effort to remedy the unquestionable vagueness that previously rendered the statute void. Notwithstanding those subsequent amendments, the statute was unconstitutionally vague at the time Fulgham entered her plea. Because Fulgham could not knowingly plead guilty to an unconstitutionally vague statute, Fulgham’s conviction must be vacated.

Furthermore, Fulgham pleaded guilty to the unconstitutional statute on the advice of her counsel. An attorney’s advice to plead guilty to an unconstitutional statute is both ineffective assistance and highly prejudicial to the client. Fulgham was misled about the statute’s validity. Furthermore, the trial court wholly failed

to consider Fulgham's ineffective assistance of counsel claim. As a result of ineffective assistance of counsel, Fulgham's conviction must be reversed.

ARGUMENT

A trial court may only accept a guilty plea if the plea is knowingly, voluntarily and intelligently entered. *See Bady v. State*, 995 So.2d 818 (Miss. Ct. App. 2008); *see also Carreiro v. State*, 5 So.3d 1170, 1172 (Miss. Ct. App. 2009). To offer a knowing plea, an individual cannot be "effectively misguided" or "misled" about the statute at issue. *See Bronson v. State*, 786 So.2d 1083, 1084 (Miss. 2001) (reversing conviction following guilty plea because attorney told client that minimum sentence was zero years, but in fact the statutory minimum was three years).

At the heart of this appeal is the unconstitutional vagueness of Miss. Code Ann. § 47-5-193. *See* Exhibit "A" in the Addendum to this Brief ("Addendum"). Under federal and state law, "a criminal statute is unconstitutional under the due process clause of the Fourteenth Amendment if it is so vague and uncertain that it does not inform those subject to it what acts it is their duty to avoid, or what conduct on their part will render them liable to its penalties." *Nichols v. City of Gulfport*, 589 So.2d 1280, 1282 (Miss. 1991) (citation omitted). "The law, of course, should give fair notice of offending conduct, or else the law is void for vagueness." *Nichols*, 589 So.2d at 1282.

As the U.S. Supreme Court has explained:

[T]he void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.

Where the legislature fails to provide such minimal guidelines, a criminal statute may permit a standardless sweep that allows policemen, prosecutors, and juries to pursue their personal predilections.”

Kolender v. Lawson, 461 U.S. 352 (1983) (holding a California statute void that required a suspect to provide ‘credible and reliable’ identification when requested by a police officer who has made a *Terry* stop) (quotations omitted); *see also Roberson v State* 501 So.2d 398, 400 (Miss. 1987) (statute must “give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by Statute”)(quoting *United States v Harris*, 347 U.S. 612 (1954)).

I. Fulgham Could Not Plead Guilty To Unconstitutionally Vague Statute

In 2004, Miss. Code Ann. § 47-5-193 was amended to add the phrase “unauthorized electronic device.” At that time, and still in 2006 when Fulgham was convicted under Miss. Code Ann. § 47-5-193, the statute provided:

§ 47-5-193. Furnishing or taking prohibited items

It is unlawful for any officer or employee of the department, of any county sheriff's department, of any private correctional facility in this state in which offenders are confined or for other person to possess, furnish, attempt to furnish, or assist in furnishing to any offender confined in this state any weapon, deadly

weapon, *unauthorized electronic device* or contraband item. It is unlawful for any person to take, attempt to take, or assist in taking any weapon, deadly weapon, *unauthorized electronic device* or contraband item on property belonging to the department which is occupied or used by offenders, except as authorized by law.

Miss. Code Ann. § 47-5-193 (as stated in January 2006) (emphasis added); *see also* General Laws of Mississippi 2004, Chap. 429, attached as Exhibit "B" in the Addendum. The statute fails to define "unauthorized electronic device."

Only a few months after Fulgham's conviction, the Circuit Court of Sunflower County concluded that the statute was unconstitutionally vague in violation of the due process clause. *State v. Poag, et.al*, Criminal No. 2006-0185, Sunflower County Circuit Court (Carey-McRay, J., October 17, 2006). CP at 19; RE 6. The Sunflower County Circuit Court noted that Miss. Code Ann. § 47-5-193 failed to give a person of ordinary intelligence fair notice that his conduct was prohibited by the statute, particularly light of the related Miss. Code Ann. § 47-5-192,¹ which allowed the Commissioner of Corrections to also prohibit the possession of the same items, but under the latter statute the offense was only a

¹ Miss. Code Ann. § 47-5-192, attached as Exhibit "C" to the Addendum, provides in relevant part:

(1) The Commissioner of Corrections may prohibit the possession by employees or officers of the Department of Corrections or any person allowed upon the premises of a correctional facility under his jurisdiction of any item, the possession of which by offenders is prohibited or regulated.

(4) Any person who violates a duly enacted rule authorized by this section shall be guilty of a misdemeanor and shall be punished by imprisonment for not more than one (1) year or by a fine of not more than One Thousand Dollars (\$1,000.00), or both.

misdemeanor. *Poag, supra*, at 1. The Sunflower County Circuit Court explained that Miss. Code Ann. § 45-7-193 “fails to define ‘unauthorized electronic device’ or to designate who has the authority to determine what type of electronic device is authorized or unauthorized.” CP at 19; RE 6. As a result, the Circuit Court held the “unauthorized electronic device” provision was void.

Moreover, the Mississippi Legislature has amended the statute not once, but twice, since first incorporating “unauthorized electronic device” in 2004. First, effective in July 2006, only six months after Fulgham’s conviction, the Legislature specifically added “cell phone” as a distinct and separate prohibited item from “unauthorized electronic device” under the statute. *See* General Laws of Mississippi, Chapter 439, attached as Exhibit “D” in the Addendum. This change alone establishes that the Legislature did not intend to cover – or failed to include – cell phones at the time of Fulgham’s conviction. Later, in 2008, the Legislature added “or any of its components or accessories to include, but not limited to, [SIM] cards, *chargers*, etc...” Miss. Code Ann. § 47-5-193. (emphasis added). *See* Exhibit “A” in the Addendum. The Legislature’s repeated attempts clarify the statute demonstrate the statute’s inherent, and unconstitutional, vagueness at the time Fulgham was convicted. It was impossible for Fulgham to have fair notice of the statute’s prohibitions.²

² Even during the plea colloquy on January, 24, 2006, the trial court hinted at the statute’s vagueness:

An Ohio court has wrestled directly with this issue and concluded a previously offered guilty plea must be vacated in light of the determination that a statute is unconstitutionally vague. *State of Ohio v. Holycross*, 1980 WL 354919 (Ohio App. 8 Dist., July 10, 1980). In *Holycross*, the defendant had pleaded guilty to statute that prohibited “engaging in organized crime.” *Holycross*, 1980 WL 354919 at *1. Sometime after that plea, the Ohio statute was declared unconstitutional. In his post-conviction petition, the defendant sought to vacate his guilty plea, arguing that he could not plead guilty to an unconstitutional statute. The Ohio appellate court agreed:

Where a statute, to which an appellant has pleaded guilty, has subsequently been found to be unconstitutionally overbroad and vague, there has been a denial or infringement of rights as to render the judgment void or voidable under...the Constitution of the United States.

Id. at *2.³ Nearly identical circumstances are present here. Fulgham, on the advice of counsel, pleaded guilty to Miss. Code Ann. § 47-5-193. Fulgham had been misled as to the constitutionality of the statute. The statute under which she was convicted was unconstitutionally vague. In 2006, the Legislature had failed to provide “minimal guidelines” for “unauthorized electronic device”; indeed, the

BY THE COURT: I’ve never had this unauthorized – providing an unauthorized, *I guess it amounts to devices or contraband* to an inmate: 47-5-193... CP at 31 (emphasis added); RE 5 at 5.

³ As illustrated in *Holycross*, an individual does not waive his or her right to challenge on post-conviction a guilty plea made to an unconstitutionally vague statute. The trial court’s ruling that Fulgham waived her right to challenge whether her plea was knowing in light of the unconstitutional vagueness of Miss. Code Ann. § 47-5-193 was in error.

related statute giving the Commissioner of Corrections power to punish the exact same conduct, but only as a misdemeanor, left the door open for the Government to have a “standardless sweep that allow[ed] policemen, prosecutors, and juries to pursue their personal predilections.” *Kolender*, 461 U.S. at 358.

Fulgham could not enter a knowing plea to the 2006 version of Miss. Code Ann. § 47-5-193. The statute itself was unconstitutional under both state and federal law. Absent a knowing plea, her conviction must be vacated.

II. Ineffective Assistance Of Counsel Requires Reversal of Conviction

The trial court failed to even consider Fulgham’s ineffective assistance of counsel claim in its Order denying post-conviction relief. CP at 41; RE 2. For this reason alone, the trial court’s order must be reversed and remanded. Notwithstanding the trial court’s omission, Fulgham’s counsel undoubtedly provided ineffective assistance as it related to Fulgham’s conviction under § 47-5-193.

“Mississippi has adopted the *Strickland v. Washington*, 466 U.S. 668 (1984) standard of review regarding claims of ineffective assistance of counsel.” *Bronson v. State*, 786 So.2d 1083, 1084 (Miss. 2001). Under this standard:

The two inquiries which must be made under that standard are “(1) whether counsel’s performance was deficient, and, if so, (2) whether the deficient performance was prejudicial to the defendant in the sense that our confidence in the correctness of the outcome is undermined.

Id. at 1085 (quotation omitted). “This standard applies to the entry of a guilty plea.” *Id.*; see also *Hill v. Lockhart*, 474 U.S. 52, 57 (1985) (the *Strickland* two-part standard applies “to ineffective-assistance claims arising out of the plea process”).

In criminal cases in particular, *McMann v Richardson* 397 U.S. 759, 768-71 (1970) explains that the Court need not consider whether the advice at trial was correct or incorrect but rather instead, “on whether that advice was within the range of competence demanded of attorneys in criminal cases.”

In *Bronson*, the attorney informed his client that if he pleaded guilty, then the client would probably receive a suspended sentence. *Id.* at 1085. The attorney had indicated that the minimum sentence under the statute was zero years. In fact, there was a statutory minimum of three years. The Court determined that the attorney has “effectively misguided” and misled the client about the statute at issue. *Bronson*, 786 So.2d at 1088. As a result, the Court granted post-conviction relief, reversing the guilty plea.

Here, Fulgham’s counsel failed to inform Fulgham or the court of the statute’s unconstitutionality. For example, at the plea colloquy, Fulgham’s counsel said she knew of no reason Fulgham’s plea should not be accepted.

BY THE COURT: Ms. Mallette, do you know of any reason why the Court should not accept Ms. Fulgham’s guilty pleas in Count One and Count Two of this indictment?

BY MS. MALLETT: No, Your Honor.

CP at 35; RE 5 at 9.

As Fulgham explained in her verified Motion For Post-Conviction Relief, her attorney never advised her that the statute was unconstitutionally vague, or even of the possibility of that as a defense. *See* CP at 2-7; RE 7. At a minimum, the conflicting statutes of Miss. Code Ann. § 47-5-193 and § 47-5-192 (providing that the Commissioner of Corrections may also proscribe items, although only as misdemeanor) would have put an attorney on notice that the statute's constitutionality was suspect.

Fulgham's counsel's performance was deficient, and this deficiency highly prejudiced Fulgham in violation of both state and federal law. As a result of the ineffective assistance of counsel, Fulgham's conviction must be reversed.

CONCLUSION

Kristi Fulgham cannot be convicted under an unconstitutionally vague statute. As demonstrated by a Mississippi trial court, as well as by the Mississippi Legislature, Miss. Code Ann. 47-5-193 was unconstitutionally vague at the time Fulgham, on the advice of counsel, entered a guilty plea. Because the statute is unconstitutional, her plea could not be knowingly and voluntarily entered. Her conviction must be vacated.

Moreover, Fulgham's counsel provided ineffective assistance by advising Fulgham to plead guilty to an unconstitutionally vague statute. Fulgham's attorney's advice was deficient and undeniably prejudicial. As a result, Fulgham's plea must be vacated. Importantly, the trial court failed to even consider Fulgham's ineffective assistance of counsel claim. For this reason alone, if her conviction is not vacated, then Fulgham's post-conviction motion must be sent back to the trial court for consideration of the ineffective assistance of counsel claim.

RESPECTFULLY SUBMITTED, this the 18 day of November 2009.

KRISTI FULGHAM

BY: 

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CERTIFICATE OF SERVICE

I hereby certify that I have on this, the 16 day of November, 2009,
caused to be mailed, United States Mail, postage prepaid, a true and correct copy
of the above and foregoing to the following:

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ADDENDUM TO BRIEF OF APPELLANT

- A. Miss. Code Ann. § 47-5-193 (2009)
- B. General Laws of Mississippi 2004, Chap. 429
- C. Miss. Code Ann. § 47-5-192 (2009)
- D. General Laws of Mississippi 2006, Chap. 439

§ 47-5-183. DNA sampling authorization

The Mississippi Department of Corrections is authorized, subject to the availability of funds, to secure a biological sample for purposes of DNA identification analysis from every individual convicted of a felony or in its custody before release from or transfer to a state correctional facility or county jail or other detention facility.

Added by Laws 2003, Ch. 459, § 1, eff. July 1, 2003.

ALCOHOLIC BEVERAGES, CONTROLLED SUBSTANCES, NARCOTIC
DRUGS, WEAPONS, AND OTHER CONTRABAND

Section

47-5-193. Furnishing or taking prohibited items.

§ 47-5-192. Authority to prohibit items; possession by employees and visitors

Cross References

Administrative Procedures Law, in general, see
§ 25-43-1.101 et seq.

§ 47-5-193. Furnishing or taking prohibited items

It is unlawful for any officer or employee of the department, of any county sheriff's department, of any private correctional facility in this state in which offenders are confined or for any other person or offender to possess, furnish, attempt to furnish, or assist in furnishing to any offender confined in this state any weapon, deadly weapon, unauthorized electronic device, cell phone, or any of its components or accessories to include, but not limited to, Subscriber Information Module (SIM) cards, chargers, etc., or contraband item. It is unlawful for any person or offender to take, attempt to take, or assist in taking any weapon, deadly weapon, unauthorized electronic device, cell phone or any of its components or accessories to include, but not limited to, Subscriber Information Module (SIM) cards, chargers, etc., or contraband item on property belonging to the department which is occupied or used by offenders, except as authorized by law.

Laws 1978, Ch. 394, § 1; Laws 1986, Ch. 423, § 4; Laws 1996, Ch. 420, § 1; Laws 1998, Ch. 391, § 1, eff. July 1, 1998; Laws 2004, Ch. 429, § 1, eff. July 1, 2004; Laws 2006, Ch. 439, § 1, eff. July 1, 2006; Laws 2008, Ch. 415, § 1, eff. from and after passage (approved April 2, 2008).

Historical and Statutory Notes

The 2004 amendment added, in the first and second sentences, ", unauthorized electronic device".

The 2006 amendment, in the first sentence, substituted "other person or offender to possess," for "other person to" and added ", or cell phone" and in the second sentence, added "or offender" and ", cell phone".

The 2008 amendment, in the first and second sentences, inserted ", or any of its components or accessories to include, but not limited to, Subscriber Information Module (SIM) cards, chargers, etc.,".

§ 47-5-196. Employee drug testing

Law Review and Journal Commentaries

Chandler v. Miller: The civil liberties sky is not falling *Chandler v. Miller*, 520 U.S. 305 (1997). Note, 19 Miss.C.L.Rev. 421 (1999).

§ 47-5-198. Control of punishment

Argument or conduct of c
Burden of proof 6
Continuance 2
Disqualification of judge
Due process 1
Evidence 7
Examination and testimon
Expert witnesses 9
Instructions 11
Jury selection 5
Record and authority 14
Review 15
Sentence 13
Sufficiency of evidence
Venue 3

1. Due process

Prosecution's failure to tapes of meetings between that defendant, who was a ing in criminal prosecution not show defendant passing was not in bad faith and in based on defendant's claim have shown that inmate li defendant passed marijuana meeting on different date, juana within correctional not exculpatory evidence testimony about marijuana date which formed basis o sented testimony from mu preserved videotapes cont fendant passing marijuana failure to preserve videot defendant from presenting committed offense on date State, 2007, 962 So.2d 64 tiorari denied 962 So.2d 4594(8); Criminal Law

2. Continuance

Denial of defendant's after subpoenaed defense for trial was not abuse sale of marijuana within fendant did not provide t service of process of sul trial, defendant made no transcript or audio recor from first trial, defendan ance for that purpose, ar cate whereabouts of witr would likely have been a time in future. Jackson 649, rehearing denied, c 38. Criminal Law 4594(3)

2004 GENERAL LAWS OF MISSISSIPPI, CH 429

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2004

By: Representative Malone

To: Corrections

Chapter 429

HOUSE BILL NO. 904
(As Sent to Governor)

AN ACT TO AMEND SECTION 47-5-193, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT IT IS UNLAWFUL FOR ANY PERSON TO FURNISH AN OFFENDER UNAUTHORIZED ELECTRONIC DEVICES THAT SEND OR RECEIVE MESSAGES; TO PROVIDE THAT IT IS UNLAWFUL FOR ANY PERSON TO TAKE UNAUTHORIZED ELECTRONIC DEVICES ONTO PROPERTY BELONGING TO THE DEPARTMENT OF CORRECTIONS; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Section 47-5-193, Mississippi Code of 1972, is amended as follows:

47-5-193. It is unlawful for any officer or employee of the department, of any county sheriff's department, of any private correctional facility in this state in which offenders are confined or for any other person to furnish, attempt to furnish, or assist in furnishing to any offender confined in this state any weapon, deadly weapon, unauthorized electronic device or contraband item. It is unlawful for any person to take, attempt to take, or assist in taking any weapon, deadly weapon, unauthorized electronic device or contraband item on property belonging to the department which is occupied or used by offenders, except as authorized by law.

SECTION 2. This act shall take effect and be in force from and after July 1, 2004.

Section

- 47-5-192. Authority to prohibit items; possession by employees and visitors.
- 47-5-193. Furnishing or taking prohibited items.
- 47-5-194. Prohibited financial items; establishing cashless system.
- 47-5-195. Violations; offense; punishment.
- 47-5-196. Employee drug testing.
- 47-5-198. Controlled substances or narcotic drugs; violations; offense; punishment.

§ 47-5-191. Definitions

As used in Sections 47-5-191 through 47-5-195, "alcoholic beverage" shall have the meaning defined in Section 67-1-5 of the Local Option Alcoholic Beverage Control Law of the State of Mississippi; "controlled substance" means any substance defined as a controlled substance by the Uniform Controlled Substances Law of the State of Mississippi; "narcotic drug" means any substance defined as a narcotic drug by Section 41-29-105; "weapon or deadly weapon" shall mean any weapon or firearm mentioned in Section 97-37-1, and any rifle or shotgun regardless of barrel length; and "contraband" means coin or currency, money orders, traveler's checks, promissory notes, credit cards, personal checks or other negotiable instruments, knives, sharpened instruments, tools, explosives, ammunition and drug paraphernalia as defined in Section 41-29-105(v).

Laws 1978, Ch. 394, § 2; Laws 1986, Ch. 341, § 2; Laws 1986, Ch. 423, § 3; Laws 1995, Ch. 420, § 2, eff. from and after passage (approved March 15, 1995).

Historical and Statutory Notes

The 1995 amendment redefined terms.

Cross References

Controlled substances law, in general, see § 41-29-101 et seq.
Possession of alcoholic beverages in correctional facilities, see § 97-31-35.

§ 47-5-192. Authority to prohibit items; possession by employees and visitors

(1) The Commissioner of Corrections may prohibit the possession by employees or officers of the Department of Corrections or any person allowed upon the premises of a correctional facility under his jurisdiction of any item, the possession of which by offenders is prohibited or regulated.

(2) The commissioner may distinguish between classes of employees and visitors and may establish zones or designate areas or facilities where such regulations apply in his discretion and as necessary for security and orderly operation of prison facilities.

(3) The commissioner shall promulgate rules authorized by this section in accordance with the Mississippi Administrative Procedures Act.

(4) Any person who violates a duly enacted rule authorized by this section shall be guilty of a misdemeanor and shall be punished by imprisonment for not more than one (1) year or by a fine of not more than One Thousand Dollars (\$1,000.00), or both.

Laws 1986, Ch. 423, § 2, eff. from and after passage (approved April 1, 1986).

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Cross References

Administrative procedures, generally, see § 25-43-1 et seq.
Imposition of state monetary assessment for violations, see § 99-19-73.

Library References

Key Numbers

Prisons Ⓒ6.
WESTLAW Topic No. 310.

Encyclopedias

C.J.S. Prisons and Rights of Prisoners § 14.

§ 47-5-193. Furnishing or taking prohibited items

It is unlawful for any officer or employee of the department, of any county sheriff's department, of any private correctional facility in this state in which offenders are confined or for any other person to furnish, attempt to furnish, or assist in furnishing to any offender confined in this state any weapon, deadly weapon or contraband item. It is unlawful for any person to take, attempt to take, or assist in taking any weapon, deadly weapon or contraband item on property belonging to the department which is occupied or used by offenders, except as authorized by law.

Laws 1978, Ch. 394, § 1; Laws 1986, Ch. 423, § 4; Laws 1996, Ch. 420, § 1; Laws 1998, Ch. 391, § 1, eff. July 1, 1998.

Historical and Statutory Notes

The 1996 amendment rephrased the sentence and provided for weapons and deadly weapons.

The 1998 amendment deleted an enumeration of contraband items and made the acts of any

county sheriff's department or any private correctional facility in Mississippi in which persons are confined prohibited under this section.

Library References

Key Numbers

Prisons Ⓒ6.
WESTLAW Topic No. 310.

Validity, construction, and application of state statute criminalizing possession of contraband by individual in penal or correctional institution, 45 A.L.R.5th 767.

ALR Library

Nature and elements of offense of conveying contraband to state prisoner, 64 A.L.R.4th 902.

Encyclopedias

C.J.S. Prisons and Rights of Prisoners § 14.

§ 47-5-194. Prohibited financial items; establishing cashless system

(1) It is unlawful for any offender committed to the department to possess:

(a) Coin or currency on his person or in premises assigned to him or under his control;

(b) A money order, traveler's check, promissory note, credit card, personal check or other negotiable instrument.

(2) Subsection (1) does not apply to offenders who are granted a parole; placed on work release, supervised earned release, earned probation or probation; or granted leave for the duration of such leave; however, these offenders may be restricted by the parole or probation order or by order of the commissioner with respect to amounts or form of money possessed or controlled by the offenders.

2006 GENERAL LAWS OF MISSISSIPPI, CH 439

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2006

By: Representative Malone

To: Corrections

Chapter 439

HOUSE BILL NO. 1002

AN ACT TO AMEND SECTION 47-5-193, MISSISSIPPI CODE OF 1972, TO CLARIFY THE ILLEGALITY OF PROVIDING CELL PHONES TO PRISONERS; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Section 47-5-193, Mississippi Code of 1972, is amended as follows:

47-5-193. It is unlawful for any officer or employee of the department, of any county sheriff's department, of any private correctional facility in this state in which offenders are confined or for any other person or offender to possess, furnish, attempt to furnish, or assist in furnishing to any offender confined in this state any weapon, deadly weapon, unauthorized electronic device, cell phone or contraband item. It is unlawful for any person or offender to take, attempt to take, or assist in taking any weapon, deadly weapon, unauthorized electronic device, cell phone or contraband item on property belonging to the department which is occupied or used by offenders, except as authorized by law.

SECTION 2. This act shall take effect and be in force from and after July 1, 2006.

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