IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

LEWIS JENKINS — APPELLANT

VS. — NO. 2007-CP-0768-COA

STATE OF MISSISSIPPI — APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

JIM HOOD, ATTORNEY GENERAL

BY: BILLY L. GORE
SPECIAL ASSISTANT ATTORNEY GENERAL
MISSISSIPPI BAR NO. [redacted]

OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MS 39205-0220
TELEPHONE: (601) 359-3680

TABLE OF CONTENTS

TABLE OF AUTHORITIES

FEDERAL CASES

STATE CASES

STATE STATUTES

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

LEWIS JENKINS **APPELLANT**

VS. **NO. 2007-CP-0768-COA**

STATE OF MISSISSIPPI **APPELLEE**

BRIEF FOR THE APPELLEE

STATEMENT OF THE CASE

This is yet another appeal from summary denial of post-conviction collateral relief sought in the wake of a guilty plea.

Appellant, who seeks vacation of his conviction and sentence, complains in a post-conviction context he was entitled to an evidentiary hearing because he was without effective counsel prior to indictment, his videotaped confessions were involuntary, he was denied his right to a speedy trial, his guilty plea to a reduced charge of manslaughter following an indictment for depraved heart murder was involuntary, and his post-indictment lawyer ineffective.

The circuit judge found these claims to be manifestly or plainly without merit and summarily denied Jenkins's "Motion to Vacate and Set Aside Conviction and Sentence." (C.P. at 169-175; appellee's exhibit A, attached)

Jenkins contends on appeal **(1)** the trial court erred in dismissing his motion to vacate without the benefit of an evidentiary hearing; **(2)** the trial judge erred in denying his motion to suppress pre-trial, videotaped confessions made to law enforcement; **(3)** the trial judge erred in denying Jenkins's

motion to dismiss the charge for want of a speedy trial; **(4)** Jenkins's plea of guilty was neither voluntary, knowing, nor intelligent; **(5)** evidence of material facts not previously presented require, in the interest of justice, vacation of Jenkins's guilty plea; **(6)** appellant was constructively denied his 6th right to counsel prior to indictment; **(7)** appellant received the ineffective assistance of retained counsel after indictment, and **(8)** the cumulative effect of all errors warrant reversal of the judgment entered by the lower court.

We respectfully defer to the seven (7) page order denying post-conviction relief entered by the circuit judge who addressed each and every claim individually and summarily denied post-conviction relief.

In **Hunt v. State,** 874 So.2d448, 452 (Ct.App.Miss. 2004), quoting from **Culbert v. State,** 800 So.2d at (¶9) (citations omitted), we find the following language:

> * * * "Furthermore, where the trial court summarily dismisses the post-conviction relief claim, it does not have an obligation to render factual findings and this Court will assume that the issue was decided consistent with the judgment and . . . will not be disturbed on appeal unless manifestly wrong or clearly erroneous."

In the case at bar, Judge Landrum, while under no obligations to do so, did make several factual findings based upon the record, certain exhibits, and prior proceedings in the case. The findings of fact and conclusions of law entered by Judge Landrum were neither clearly erroneous nor manifestly wrong. Rather, they were both judicious and correct.

STATEMENT OF FACTS

Lewis Jenkins, a fifty-one (51) year old male with a 12th grade education who testified during his plea-qualification hearing he could both read and write (R. 57), appeals from an order summarily denying post-conviction collateral relief entered on November 3, 2006, in the Circuit Court of Jones

County, Billy Joe Landrum, Circuit Judge, presiding. *See* appellee's exhibit A, attached.

The facts surrounding Jenkins's plea of guilty on July 29, 2004, to a reduced charge of manslaughter are complete.

A "Petition to Enter Plea of Guilty," signed by Jenkins under the trustworthiness of the official oath, is a part of the record at C.P. 37-43.

A transcript of the plea-qualification hearing is also included in the official record at C.P. 44-64.

An indictment returned on March 15, 2004, charged Jenkins with the depraved heart murder of Teressa Gillum, a/k/a "Queen Bee" (C.P. at 72, 115), in December of *2002*. (C.P. at 32)

The charge was subsequently reduced to heat of passion manslaughter committed "on or about the latter part of November through December, *2001* . . ." (C.P. at 34-35)

Jenkins twice confessed to law enforcement he shot Queen Bee sometime in 2001 after Thanksgiving but prior to Christmas. (C.P. 114, 112-135, 137-142) Her body was located in a shallow grave on or about February 8, 2002. (C.P. at 152) According to Dr. Steven Hayne, State medical examiner, Queen Bee's body had been in the grave approximately 2-6 months. (C.P. at 152)

Lewis Jenkins, a known associate of Queen Bee and a drug dealer with a prior drug related conviction (C.P. at 39, 47), allegedly supplied drugs. *viz.*, crack cocaine, to Teressa Gillum. (C.P. at 116, 152)

Witnesses saw Jenkins cleaning up what appeared to be blood on the interior walls of a rental trailer located next to the house where Jenkins lived with his mother. (C.P. at 152)

Pursuant to a plea-bargain negotiated by Ms. Otisa Strickland, Jenkins's retained lawyer (C.P. at 50), Jenkins entered a plea of guilty to a reduced charge of manslaughter during a plea-qualification hearing conducted on July 29, 2004. (C.P. at 45-46) As stated previously, a transcript

of that hearing is a matter of record for the purpose of Jenkins's appeal. (C.P. at 44-64)

A five (5) page petition to enter plea of guilty subscribed by Jenkins, under the trustworthiness of the official oath, is also a matter of record at C.P. 37-41.

A two page certificate of counsel is attached to Jenkins's petition to enter plea of guilty to manslaughter.

Following Jenkins's plea of guilty to heat of passion manslaughter, Judge Landrum accepted the prosecutor's recommendation of twenty years in the custody of the MDOC with fifteen (15) years to serve and five (5) years of PRS. (C.P. at 47) This recommendation by the prosecutor was a part and parcel of the plea-bargain agreement. (R. 46-47)

Jenkins's Petition to Enter Plea of Guilty reflects in paragraph 7 that Jenkins was aware the minimum sentence was 2 years and the maximum sentence was 20 years. (C.P. at 38)

Paragraph 13 of the petition reflects that Jenkins was satisfied with the advance help and services rendered by his attorney while paragraph 14 reflects Jenkins was offering his plea of guilty "freely and voluntarily . . . with a full understanding of all the matters set forth in the indictment and in this petition and in the certificate of my lawyer which follows." (C.P. 40)

Jenkins also told Judge Landrum during the plea-qualification hearing he was satisfied with his lawyer's representation and advice. (C.P. at 62)

Fourteen (14) months later, Jenkins changed his mind.

On September 26, 2005, Jenkins filed a "Motion to Vacate and Set Aside Conviction and Sentence" claiming his plea was involuntary, his confessions coerced, his right to a speedy trial violated, and his lawyers ineffective . (C.P. at 7-23) Jenkins also claimed he was denied his right to counsel prior to indictment and that newly evaluated evidence would have generated a viable defense to the charge.

In summarily denying post-conviction relief, Judge Landrum addressed, individually, each of the claims made by Jenkins, including Jenkins's claim of ineffective counsel which Judge Landrum rejected after applying the correct legal standard found in *Strickland v. Washington* [citation omitted].

SUMMARY OF ARGUMENT

Judge Landrum properly dismissed Jenkins's motion for post-conviction relief because it was manifestly or plainly without merit. His findings of fact and conclusions of law were neither clearly erroneous nor manifestly wrong.

We respectfully submit Jenkins failed to demonstrate by a preponderance of the evidence he was entitled to any relief. Stated differently, it is clear upon the face of Jenkins's motion to vacate, the exhibits attached thereto, and the prior proceedings in the case there are no facts upon which Jenkins could prevail. **Fairley v. State,** 812 So.2d 259, 262 (Ct.App.Miss. 2002) citing **Robertson v. State**, 669 So.2d 11 (Miss. 1996) and **Taylor v. State,** 782 So.2d 166, 168 (¶ 14) (Ct.App.Miss. 2000).

"When the record of the plea hearing belies the defendant's claims, an evidentiary hearing is not required." **Richardson v. State,** 769 So.2 230, 235 (Ct.App.Miss. 2000).

By entering his voluntary plea of guilty, Jenkins waived his Fifth Amendment *Miranda* rights and his Sixth Amendment right to a speedy trial. **Bishop v. State,** 812 So.2d 934 (Miss. 2002).

By pleading guilty, Jenkins also waived any defenses he might have had to the charge of manslaughter. **Taylor v. State,** *supra*, 766 So.2d 830 (Ct.App. Miss. 2000).

In short, Lewis Jenkins's voluntary plea of guilty waived and forfeited all rights and non-jurisdictional defects incident to trial, including the right to a trial by jury, the right to subpoena and

call witnesses in his own behalf, the right to a fast and speedy public trial, and the right to assail non-jurisdictional defects found in an indictment or information. **Drennan v. State,** 695 So.2d 581 (Miss. 1997); **Luckett v. State,** 582 So.2d 428 (Miss. 1991); **Anderson v. State,** 577 So.2d 390 (Miss. 1991).

ARGUMENT

JENKINS FAILED TO DEMONSTRATE BY A PREPONDERANCE OF THE EVIDENCE HE WAS ENTITLED TO POST-CONVICTION RELIEF.

It has been said time and again that when reviewing a decision by a trial court denying a petition for post-conviction relief, this Court will not disturb the trial court's factual findings unless they are found to be clearly erroneous. **Brown v. State,** 731 So.2d 595, 598 (¶6) (Miss. 1999).

On the other hand, where questions of law are raised, the applicable standard of review is *de novo*.

Issue One - Denial of Evidentiary Hearing.

Jenkins argues in issue one ". . . that the trial court's decision denying . . . post-conviction [relief] without an evidentiary hearing was error." Brief of Appellant at 15. Jenkins argues he was entitled to an evidentiary hearing to adjudicate his claim he was constructively denied counsel from the date of his arrest to the date of indictment, a period of approximately two (2) years. This claim is made within the context of certain defense strategies that could have been developed during this time frame.

All of this is immaterial because Jenkins subsequently entered a voluntary plea of guilty to a reduced charge and waived those defenses.

Not every motion for post-conviction relief filed in the trial court must be afforded a full

adversarial hearing. **Jones v. State,** 795 So.2d 589 (Miss. 2001). Defendants must show compelling reasons why the trial court should conduct an evidentiary hearing. **Crouch v. State,** 826 So.2d 772 (Ct.App.Miss. 2002).

Jenkins has failed to do so here.

"A trial judge has considerable discretion in determining whether to grant an evidentiary hearing." **Hebert v. State,** 864 So.2d 1041, 1045 (¶11) (Ct.App.Miss. 2004) citing **Meeks v. State,** 781 So.2d 109, 114 (¶ 14) (Miss. 2001).

Where, as here, the trial judge can determine that a factual assertion by the movant is either immaterial or belied by unimpeachable evidence in the transcript or record of the case leading to the plea of guilty, no hearing is required and the judge may summarily dismiss the motion. **Knight v. State,** 796 So.2d 262 (Ct.App.Miss. 2001).

No abuse of judicial discretion has been demonstrated in this case. An evidentiary hearing was neither prudent nor required.

Issue Two - Involuntary Confession.

Jenkins argues in issue two his confessions were coerced and involuntary. By pleading guilty Jenkins waived this defense.

We find in **Bishop v. State,** 812 So.2d 934, 945 (Miss. 2002), the following language applicable to the waiver doctrine:

> By pleading guilty a defendant waives his constitutional rights against self-incrimination, to confront witnesses, and the requirement to have each element of the offense proved beyond a reasonable doubt. See Chunn v. State, 669 So.2d 29, 32 (Miss. 1996); *Jefferson v. State*, 556 So.2d 1016, 1019 (Miss. 1989). A defendant is allowed to waive many important rights. *See Michigan v. Jackson*, 475 U.S. 625, 106 S.Ct. 1404, 89 L.Ed.2d 631 (1986) (waiver of Sixth Amendment right to counsel); *North Carolina v. Butler*, 441 U.S.

> 369, 374-75, 99 S.Ct. 1755, 60 L.Ed.2d 286 (1979) (waiver of Fifth Amendment or Miranda rights); *Schneckloth v. Bustamonte*, 412 U.S. 218, 248-49, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973); (waiver of Fourth Amendment rights by persons not in custody); *Illinois v. Maxwell*, 173 Ill.2d 102, 219 Ill.Dec. 1, 670 N.E.2d 679, 686-87 (1996) (waiver of sentencing jury in death penalty did not violate due process where trial court conducted extensive inquiry and determined that defendant's waiver was knowing, intelligent, and voluntary).

By pleading guilty, a defendant also waives any defenses he might have had to the charges. **Taylor v. State**, 766 So.2d 830 (Ct.App.Miss. 2000).

Moreover, Jenkins's voluntary plea of guilty obviated the necessity for the prosecution to prove his confessions voluntary beyond a reasonable doubt. Nevertheless, Judge Landrum ruled that the confessions were freely and voluntarily given during a suppression hearing conducted on July 27th two days prior to Jenkins's guilty plea. (C.P. at 224) That decision is not subject to appellate review in the wake of a guilty plea assailed in a post-conviction environment. Lest Jenkins forgets, this is not a direct appeal from trial and conviction.

Issue Three - Denial of Speedy Trial.

Jenkins, relying upon the familiar factors found in **Barker v. Wingo** [citation omitted], claims in his third issue he was denied his Sixth Amendment right to a speedy trial. Judge Landrum decided this question adversely to Jenkins during the suppression hearing conducted July 27th, 2004. (C.P. at 224-228)

No matter.

We remind Jenkins and his prolific writ writer this is not an appeal from trial and conviction. Rather, the issue is raised in the context of a guilty plea assailed in a post-conviction environment. Judge Landrum found as a fact and concluded as a matter of law that Jenkins's speedy trial complaint was waived by Jenkins's plea of guilty. (C.P. at 171)

It was.

In **Jefferson v. State**, 556 So.2d 1016, 1019 (Miss. 1989), this Court opined:

> We are concerned here with the legal effect of Jefferson's two 1981 guilty pleas. The institution of the guilty plea is well established in our criminal justice process. **A guilty plea operates to waive the defendant's privilege against self-incrimination/2, the right to confront and cross-examine the prosecution's witnesses/3, the right to a jury trial/4 and the right that the prosecution prove each element of the offense beyond a reasonable doubt./5**
>
> **Outside the constitutional realm, the law is settled that with only two exceptions, the entry of a knowing and voluntary guilty plea waives all other defects or insufficiencies in the indictment. [citations omitted]** A defendant's right to claim that he is not the person named in the indictment may be waived if not timely asserted. *Anselmo v. State*, 312 So.2d 712 (Miss. 1975). The principle exception to the general rule is that the failure of the indictment to charge a criminal offense or, more specifically, to charge an essential element of a criminal offense, is not waived. *See Durr v. State*, 446 So.2d 1016, 1017 (Miss. 1984); *Maxie v. State*, 330 So.2d 277, 278 (Miss. 1976). And, of course, a guilty plea does not waive subject matter jurisdiction. [Text of notes 2-5 omitted; emphasis supplied]]

We find in **Anderson v. State,** 577 So.2d 390, 391 (Miss. 1991), the following language also applicable to Jenkins's complaint:

> Moreover, **we have recognized that a valid guilty plea operates as a waiver of all non-jurisdictional rights or defects which are incident to trial.** *Ellzey v. State*, 196 So.2d 889, 892 (Miss. 1967). We have generally included in this class "those [rights] secured by the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States, as well as those comparable rights secured by Sections 14 and 26, Article 3, of the Mississippi Constitution of 1890." *Sanders v. State*, 440 So.2d 278, 283 (Miss. 1983); *see also Jefferson v. State*, 556 So.2d 1016, 1019 (Miss. 1989). **We take this opportunity to specifically include in that class of waivable or forfeitable rights the right to a speedy trial, whether of constitutional or statutory origin.**
>
> This view is in accord with that of our sister states. [citations

omitted]

> This rule also prevails in the federal arena. [citations omitted; emphasis ours]

See also **Rowe v. State,** 735 So.2d 399 (Miss. 1999), rehearing denied April 15, 1999, which held that a voluntary guilty plea waives the right to a speedy trial.

The factual environment in **Rowe** is virtually identical to that found here. We quote:

> The Harrison County Grand Jury indicted Myron Vincent Rowe on October 13, 1994, for the murder of Robert, a transient. **Rowe moved for dismissal of the murder charge against him on April 12, 1995, based on his Sixth Amendment right to a speedy trial. Rowe argued the Sate had failed to prosecute him with 270 days as required by law. Judge Whitfield denied Rowe's motion on June 15, 1995. That same day, Rowe pleaded guilty to manslaughter and was sentenced to eighteen years in the custody of the Mississippi Department of Corrections.**
>
> Rowe petitioned for post-conviction relief on December 9, 1996. **Rowe argued his Sixth Amendment right to a speedy trial had been violated because the State failed to bring him to trial within 270 days as required by law.** Rowe's petition for post-conviction relief was denied. December 19, 1997. Rowe timely appealed.
>
> **This Court has found that a guilty plea waives the right to a speedy trial, whether that right is of constitutional or statutory origin. *Anderson v. State*, 577 So.2d 390, 391-92 (Miss. 1991).**
>
> In *Anderson* the Court stated: [test of quotation omitted]
>
> **In the case *sub judice*, Rowe's guilty plea was given voluntarily. As stated in the *Anderson* decision, the right to a speedy trial is waivable. Therefore, the trial court's denial of post-conviction relief was proper. As a result, Rowe's motion for rehearing is denied.** [emphasis supplied]

Judge Landrum's finding of fact and conclusion of law that by pleading guilty Jenkins had waived his right to a speedy trial was neither clearly erroneous nor manifestly wrong.

Issue Four - Involuntary Plea.

Jenkins claims in his fourth issue his plea was involuntary because he was not made aware of the minimum and maximum sentence for manslaughter and was never informed of the elements of manslaughter.

The record completely belies these claims. (C.P. at 38, 48-51)

During the plea-qualification hearing, Mr. Bisnette, the prosecutor gave a very detailed synopsis of the facts the State would prove if the case went to trial, including a recitation of the reduced charge of manslaughter which alleged, *inter alia*, that Jenkins killed Gillum " . . . without malice in the heat of passion by striking her in the head with an object and without authority of law [and] not in necessary self defense . . . " (C.P. at 45) If that doesn't inform a defendant of the elements of manslaughter, we don't know what does.

Having been informed of the reduction in the charge from murder to manslaughter, Ms Strickland, counsel for the defendant, proceeded to tell the judge that Jenkins " . . . wishes to change his plea of not guilty to guilty." (C.P. at 46) She went on to say that ". . . the State would recommend a sentence of 20 years in the custody of MDOC with 15 years to serve followed by five years on post-release supervision." (C.P. at 47)

Although Jenkins claims he was never informed of the minimum and maximum sentence for manslaughter, we invite the attention of the Court to paragraph 7 of the petition to enter plea of guilty which reflects the possible sentence was "two years to twenty years." (C.P. at 38) It is important to note that Jenkins signed that petition under the trustworthiness of the official oath on July 28th, the day prior to his plea-qualification hearing and the taking of his guilty plea. (C.P. at 41)

The certificate of counsel executed on July 29th states in paragraph 3 that Ms. Strickland explained the maximum penalties for each count. (C.P. at 42) Both the petition to enter plea of guilty and accompanying certificate of counsel must stand for something.

Pursuant to the plea bargain, the State's recommendation was twenty (20) years with fifteen (15) years to serve and five years PRS. Judge Landrum accepted the State's recommendation. (C.P. at 63, 230)

Needless to say, Jenkins got a real meal deal.

Issue Five - Material Facts Not Previously Presented.

Jenkins argues in his fifth issue that certain evidence never presented warrants vacation of his guilty plea. Jenkins points to evidence that would have dispelled any notions that Jenkins struck Queen Bee with a table lamp or used his daddy's truck to haul Queen Bee's corpse to a rural site where Jenkins buried it in the woods near the Tawanta graveyard. (C.P. at 123-25)

These are matters that would have been relevant to Jenkins's defense had he gone to trial. Jenkins did not go to trial; rather, he entered a plea of guilty. "Because [Jenkins] pled guilty, he waive any defenses he might have had to the charges." **Taylor v. State,** 766 So.2d 830, 835 (Ct.App.Miss. 2000) citing **Anderson v. State,** 577 So.2d 390, 391 (Miss. 1991).

Issues Six and Seven. Denial of Counsel & Effective Assistance of Counsel.

Jenkins argues in his sixth issue he was constructively denied his Sixth Amendment right to counsel for two years following his arrest but prior to indictment. Although the Public Defender was appointed to represent Jenkins during his initial appearance on March 14, 2002 (C.P. at 67), Jenkins laments that counsel did nothing.

This argument is devoid of merit because Jenkins had effective counsel representing his interests after his indictment on March 15, 2004. Nothing in this record reflects the Public Defender's representation was deficient or that any deficiency actually prejudiced Jenkins. To the contrary, Jenkins twice confessed he killed Queen Bee. Jenkins was hopelessly guilty.

Jenkins argues in his seventh issue his retained attorney, Ms. Otisa Strickland, was

ineffective because she failed to conduct an independent investigation of the facts and circumstances of the case and failed to interview witnesses. (Brief of Appellant at 33) All that Ms Strickland did for Jenkins was negotiate a plea-bargain whereby the State agreed to reduce a charge of murder to manslaughter and recommend to the judge a sentence of twenty (20) years with fifteen (15) years to serve and five (5) years of PRS. (C.P. at 45-51) This contradicts, if not belies, Jenkins's claim of ineffective counsel.

During the plea-qualification hearing, Judge Landrum, person to person and eyeball to eyeball, asked Jenkins the following question:

> THE COURT: Are you satisfied with your lawyer's representation and advice?

Jenkins's response.

> THE DEFENDANT: Yes, sir. (C.P. at 62)

Paragraph 13 of the petition to enter plea of guilty reflects that Jenkins was satisfied with the advance help and services rendered by his attorney while paragraph 14 reflects Jenkins was offering his plea of guilty "freely and voluntarily . . . with a full understanding of all the matters set forth in the indictment and in this petition and in the certificate of my lawyer which follows." (C.P. at 40) The certificate of counsel attests to these facts. (C.P. at 42-43)

Judge Landrum found as a fact and concluded as a matter of law that based upon the "totality of the circumstances," which included a review of the transcript of Jenkins's two confessions, the petition to enter guilty plea, the suppression hearing transcript and the plea-qualification transcript, Jenkins had not been denied the effective assistance of counsel. (C.P. at 172-74)

We concur.

Judge Landrum also placed great weight upon Jenkins's assertion, made under the

trustworthiness of the official oath, he was satisfied with the advance help his lawyer had given him and believed his lawyer had done all she could to represent him. (C.P. at 172)

Although a defendant is entitled to change his mind, solemn declarations made in open court under the trustworthiness of the official carry a strong presumption of verity. **Baker v. State**, 358 So.2d 401, 403 (Miss. 1978).

In **Harris v. State,** No. 2005-CP-01325-COA decided August 8, 2006, (¶ 18) slip opinion at 11 [Not Yet Reported], we find the following language penned in the wake of an ineffective assistance of counsel claim:

> Further, Harris was asked by the court at his plea hearing whether he was satisfied with the assistance he received from his counsel, *and he admitted under oath that he was.* There is a strong presumption of validity of statements made under oath. *Mowdy v. State,* 638 So.2d 738, 743 (Miss. 1994). [emphasis supplied]

That presumption of validity has not been overcome by Jenkins.

Jenkins's admission to Judge Landrum, made in open court under the trustworthiness of the official, has got to stand for something.

"When a convicted defendant challenges his guilty plea on grounds of ineffective assistance of counsel, he must show unprofessional errors of substantial gravity. Beyond that, he must show that those errors proximately resulted in his guilty plea and that but for counsel's errors he would not have entered the plea." **Reynolds v. State,** 521 So.2d 914, 918 (Miss. 1988). In the case at bar, Jenkins must show how counsel's errors affected his decision to plea guilty.

We rely upon the cases of **Ford v. State,** 708 So.2d 73 (Miss. 1998), **Richardson v. State,** *supra*, 769 So.2d 230 (Ct.App.Miss. 2000), and **Taylor v. State,** 766 So.2d 830 (Ct. App.Miss. 2000), in support of our claim that Judge Landrum was correct in denying Jenkins's claims without

the benefit of an evidentiary hearing. Indeed, Jenkins's papers identified no egregious deficiencies or prejudice. Jenkins, who personally appeared before Judge Landrum on July 29th, 2004, failed to point out then and there the omissions of counsel he points out here and now.

In the **Ford** case, this Court held " . . . that Ford has failed to meet his statutory burden of proof regarding the allegation of ineffective assistance of counsel in that his assertions lack[ed] the 'specificity and detail' required to establish a *prima facie* showing." 708 So.2d at 75, para. 8.

Same here.

In **Taylor** the Court of Appeals held that Taylor was not denied the effective assistance of legal counsel during his plea of guilty to robbery and attempted robbery where Taylor stated during the plea-qualification hearing he was satisfied with his lawyer's representation and his lawyer had not pressured him into pleading guilty. The Court also held that "[b]ecause Taylor pled guilty, he waived any defense he might have had to the charges." 766 So.2d at 835.

Same here.

Issue Eight - Cumulative Error.

There being no reversible error in any part, there can be no reversible error in the whole. **Genry v. State,** 735 So.2d 186, 201 (Miss. 1999).

CONCLUSION

While Jenkins and his writ writer are entitled to an A for penmanship, they are not entitled to post-conviction relief.

The circuit judge, insofar as this record reflects, did not err in finding as a fact and concluding as a matter of law that Jenkins's motion for post-conviction relief was plainly without merit.

"A trial court may summarily dismiss a post-conviction petition when it is clear upon the face

of the petition itself or the exhibits or material from prior proceedings that there are no facts upon which the petitioner could prevail." **Fairley v. State,** 812 So.2d 259, 262 (Ct.App.Miss. 2002) citing **Robertson v. State**, 669 So.2d 11 (Miss. 1996) and **Taylor v. State,** 782 So.2d 166, 168 (¶ 14) (Ct.App.Miss. 2000).

Jenkins has failed to demonstrate "a claim that is procedurally alive which *substantially shows that he has been denied a state or federal right.*" **Horton v. State,** 584 So.2d 764, 767 (Miss. 1991).

Miss.Code Ann. § 99-39-11 (2000) reads, in its pertinent parts, as follows:

* * * * * *

> (2) *If it plainly appears* from the face of the motion, any annexed exhibits and the prior proceedings in the case that the movant is not entitled to any relief, *the judge may make an order* for its dismissal and *cause the prisoner to be notified.*

* * * * * *

It did, he made, and he was.

Judge Landrum's ruling denying post-conviction relief should be forthwith affirmed.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

BY: _____

BILLY L. GORE
SPECIAL ASSISTANT ATTORNEY GENERAL
MISSISSIPPI BAR NO. [redacted]

OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MS 39205-0220
TELEPHONE: (601) 359-3680

CERTIFICATE OF SERVICE

I, Billy L. Gore, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

Honorable Billy Joe Landrum
Circuit Court Judge, District 18
Post Office Box 685
Laurel, MS 39441

Honorable Anthony J. Buckley
District Attorney, District 18
Post Office Box 313
Laurel, MS 39441

Lewis Jenkins, #L0407
M.W.C.F.
Post Office Box 528
Columbia, MS 39429

This the 26TH day of July, 2007.

BILLY L. GORE
SPECIAL ASSISTANT ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MISSISSIPPI 39205-0220
TELEPHONE: (601) 359-3680

IN THE CIRCUIT COURT OF JONES COUNTY, MISSISSIPPI
FIRST JUDICIAL DISTRICT

LEWIS JENKINS — MOVANT

VS. — CIVIL ACTION NO.: 2006-38-CV10

STATE OF MISSISSIPPI — RESPONDENT

ORDER DENYING MOTION FOR POST CONVICTION COLLATERAL RELIEF

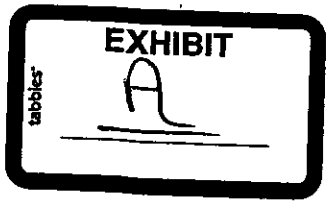
Lewis Jenkins seeks relief from conviction in Jones County Circuit Court, First Judicial District, No. 2004-6-KR1 wherein he entered a guilty plea to the reduced charge of manslaughter. The Court having fully reviewed the Motion to Vacate and Set Aside Conviction and Sentence and Exhibits attached thereto, the court files, the transcript of the suppression hearing and the transcript of the hearing on the plea petition, and being fully and maturely advised in the premises does find and adjudicate as follows, to-wit:

1. JURISDICTION

The Movant timely filed for Post Conviction Collateral Relief within three years of the entry of his guilty plea on July 29, 2004 to the charge against him in 2004-6-KR1 being manslaughter. The Court has full and complete jurisdiction over the Motion for Post Conviction Collateral Relief, See Miss. Code of 1972, Annotated § 99-39-11.

2. ALLEGATIONS OF ERROR

Movant primarily argues that (1) he had ineffective assistance of counsel, (2) that his right to a speedy trial was violated, (3) that his two videotaped confessions were coerced, fabricated and involuntary, and (4) that his plea was not knowingly, intelligently



and voluntarily entered. He also requests an evidentiary hearing with counsel appointed to represent him in this matter.

3. REQUEST FOR EVIDENTIARY HEARING AND APPOINTED COUNSEL

Movant's request for an evidentiary hearing is not sufficient when viewed in light of the overwhelming evidence against him that supports his conviction. Furthermore, Mr. Jenkins is not entitled to court appointed counsel to represent him on his motion for post conviction relief.

4. REVIEW OF COURT FILE

Jenkins' motion states that his right to a speedy trial was violated. However, page one (1), paragraph five (5) of Movant's Petition to Enter Plea of Guilty says "I understand that I may plead 'Not Guilty' to any offense(s) against me. If I choose to plead 'Not Guilty' the Constitution guarantees me: (a) the right to a speedy and public trial by jury." It is clear from his signed, sworn plea petition that he was advised of his right to a speedy trial and that he chose to waive that right. Furthermore, Jenkins' counsel argued that his right to a speedy trial was violated during the July 27, 2004 hearing on the Motion to Dismiss that was denied by the trial court.

Movant's arguments are similar to those made in *Turner v. State*, 864 So. 2d 288, 290 (Miss. 2003) wherein Turner argued that the delay from the time of the indictment and sentencing established that he was denied a speedy trial defense by his ineffective counsel. A review of Jenkins' court file shows he was indicted by a grand jury on or about

March 15, 2004 and was served his indictment on or about March 19, 2004. Jenkins was arraigned on March 23, 2004 and the Arraignment Order indicates that he was not appointed counsel from the Office of the Public Defender as alleged in his motion. He makes various complaints about the public defender never filing motions on his behalf or withdrawing from his case when a family member hired private counsel for him. However, the Arraignment Order contradicts his allegations because it states that "he has hired the Honorable Otisa Strickland to represent him and upon being required to plead, the Defendant pled NOT GUILTY to the charge of DEPRAVED HEART MURDER." The Arraignment Order set the case for trial on August 2, 2004. Shortly thereafter the defendant filed various motions on his own behalf. On July 26, 2004 counsel for Movant filed a Motion to Suppress, a Motion to Dismiss and a Motion for Continuance which defense counsel set for hearing on July 27, 2004. On July 29, 2004 the District Attorney's Office filed a Motion to Reduce Charge which was granted by the Court and reduced the murder charge to manslaughter. As in *Turner v. State*, 864 So. 2d 288 (Miss. 2003) this Court finds that the length of delay between arrest (March 14, 2002) or indictment (March 15, 2004) and sentencing (July 29, 2004) is inconsequential because a valid guilty plea waives the right to a speedy trial.

5. PLEA HEARING

The Court heard and accepted the guilty plea of Lewis Jenkins on July 29, 2004. The hearing was based on the plea petition filed that day by Jenkins. The record is clear

that Jenkins was repeatedly advised by Circuit Court Judge Billy J. Landrum that he would be waiving numerous constitutional rights by entering a guilty plea. Movant's allegation of ineffective assistance of counsel is contradicted by page four (4), paragraph thirteen (13) of the plea petition which states, "I believe that my lawyer has done all that anyone could do to counsel and assist me. **I AM SATISFIED WITH THE ADVANCE HELP HE HAS GIVEN ME;** I recognize that if I have been told by my lawyer that I might receive probation or a light sentence, this is merely his prediction and is not binding on the Court." Therein he clearly states that he is satisfied with the services of his attorney.

The Court questioned the Movant at length as to his satisfaction with his attorney, coercion to take the plea, and the voluntariness of his plea. The transcript of his plea hearing is attached to his Motion to Vacate and Set Aside Conviction and Sentence filed herein, therefore, the Court will not quote directly from the transcript as it will be part of this record.

Jenkins does not address the likelihood of conviction in his motion, however, he attached transcripts of his two confessions to his motion which establish a great likelihood of conviction. The delay from date of indictment to entry of his guilty plea is approximately four (4) months. However, Jenkins has shown the Court no negative consequences from this delay. Furthermore, this court follows the reasoning in *Jefferson v. State,* 818 So. 2d 1099 (Miss. 2002) and finds that based on the totality of the circumstances, a review of the court files, the transcripts of his two confessions, the

petition to enter guilty plea, the suppression hearing transcript and the plea hearing transcript there is no evidence that the outcome would have been different if Ms. Strickland had filed any other motions on Mr. Jenkins' behalf. However, the Court notes that Ms. Strickland argued both a Motion to Dismiss and a Motion for Continuance immediately following oral arguments on the Motion to Suppress. All three (3) motions were denied by the trial court.

The Movant had ample opportunity to tell the Court that he felt his rights were being violated, but instead stated that he was pleased with his attorney and that his plea was voluntary. Further, the Movant's claim that he had ineffective assistance of counsel is unpersuasive when viewed in light of transcript from the suppression hearing, Motion to Dismiss and the Motion for Continuance. Said transcript is attached hereto as Exhibit "A". At the conclusion of the testimony from the suppression hearing the trial court made the following ruling and said,

> "I commend you on your effort, but I just don't really see after hearing everything and seeing the film or seeing video that he wasn't afforded all his rights and given an opportunity to - - after observing his demeanor on the film he seemed to be totally competent to me. And I think he was afforded all the rights that are necessary, read the Miranda warning, as it's referred to commonly. And I think the tapes are admissible on the basis that were freely, voluntarily and without any duress or promise, based on the

testimony of the officers and based on the observations of the witness whenever he was testifying. Motion will be overruled."

There is a presumption that Jenkins had adequate counsel. *See Burns v. State*, 813 So. 2d 668, 673 (Miss. 2001) and *Stringer v. State*, 454 So. 2d 468, 477 (Miss. 1984).

Strickland v. Washington, 104 S.Ct. 2052 (1984) sets forth the two prong test that must be met to prove counsel was ineffective. The first prong of the test is to show that counsel was deficient in his representation. The second prong of the test is to show that this deficiency prejudiced the defendant. Jenkins has failed to show this Court that Ms. Strickland was deficient in her representation or that he was prejudiced in any way. According to *Strickland* the burden of proof is on the Movant to show these deficiencies, and Jenkins has not met that burden. The Court finds no merit in any of the allegations listed by Movant in his motion, and further finds that the Movant received a plea bargain on the charges which is the most lenient the Court would allow in all likelihood.

6. SUPPRESSION HEARING

Movant alleges that his two (2) videotaped confessions were coerced, fabricated and involuntary. Attached to the confessions are waivers of his rights that contain his Miranda warnings. Nothing in the three transcribed statements attached to Jenkins' Motion to Vacate and Set Aside Conviction and Sentence indicates that he was forced to make the statements or that the statements were untrue.

THEREFORE, PREMISES CONSIDERED, the Court finds that the Movant

Lewis Jenkins is not entitled to any relief, and that the Motion to Vacate and Set Aside Conviction and Sentence should be, and hereby is, denied. Movant's request for an evidentiary hearing and appointed counsel in this matter should be, and hereby is, denied. All costs assessed to Jones County.

A copy of this Order shall be mailed by the Circuit Clerk of this Court forthwith to the last address appearing of record for Movant.

SO ORDERED AND ADJUDGED this the 1st day of November, 2006.

BILLY J. LANDRUM, CIRCUIT JUDGE