

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

COPY

JUDY WILBANKS

FILED

APPELLANT

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VS.

**OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS**

NO. 2008-CA-0119-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF THE ISSUES	1
STATEMENT OF THE FACTS	2
SUMMARY OF THE ARGUMENT	3
ARGUMENT	4
I. WILBANKS' GUILTY PLEA WAS VOLUNTARILY, KNOWINGLY, AND INTELLIGENTLY ENTERED WITHOUT COERCION.....	4
II. WILBANKS RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL	6
CONCLUSION	9
CERTIFICATE OF SERVICE	10

TABLE OF AUTHORITIES

STATE CASES

Gable v. State, 748 So.2d 703, 706 (Miss. 1999)	4
Henderson v. State, 769 So.2d 210, 214 (Miss. Ct. App. 2000)	5, 7
King v. State, 503 So.2d 271, 275 (Miss. 1987)	6
Lamar v. State, 983 So.2d 364, 367 (Miss. Ct. App. 2008)	6
Leavitt v. State, 982 So.2d 981, 984 (Miss. Ct. App. 2008)	6
McNeal v. State, 951 So.2d 615 (¶6) (Miss. Ct. App. 2007)	4
Swift v. State, 815 So.2d 1230, 1234 (Miss. Ct. App. 2001)	7
Thornhill v. State, 919 So.2d 238, 241 (Miss. Ct. App. 2005)	7
Triplett v. State, 840 So.2d 727, 731 (Miss. Ct. App. 2002)	6

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VS.

NO. 2008-CA-0119-COA

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APPELLEE

BRIEF FOR THE APPELLEE

STATEMENT OF THE ISSUES

- I. WILBANKS' GUILTY PLEA WAS VOLUNTARILY, KNOWINGLY, AND INTELLIGENTLY ENTERED WITHOUT COERCION.
- II. WILBANKS RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL.

STATEMENT OF THE FACTS

In 2002, Judy Wilbanks pled guilty to murder and aggravated assault. She was sentenced to life without the possibility of parole on the murder charge and a concurrent 20 year sentence on the aggravated assault charge. Wilbanks subsequently filed a motion for Post-Conviction Relief, which was denied by the trial court after an evidentiary hearing.

SUMMARY OF THE ARGUMENT

The trial court correctly denied Wilbanks' motion for post conviction relief. Wilbanks asserts that she was coerced by her trial counsel to plead guilty, rendering her plea involuntary. However, Wilbanks testified in open court that she was entering the plea voluntarily without coercion, threats, or promises. During this examination, Wilbanks also acknowledged that she was fully aware of the charges pending against her and the ramifications of her guilty plea. Additionally, defense counsel refuted Wilbanks' claim at the evidentiary hearing. The trial court, sitting as the fact finder, properly resolved the conflicting testimony in favor of the State.

Wilbanks also asserts that she received ineffective assistance of counsel, alleging a myriad of alleged errors by her trial counsel. However, during her plea hearing, Wilbanks was asked if she was satisfied with the performance of her attorney, to which she responded in the affirmative. Further, Wilbanks was afforded a full blown evidentiary hearing, but was still unable to prove her claim of ineffective assistance. As such, the trial court properly denied post-conviction relief.

ARGUMENT

I. **WILBANKS' GUILTY PLEA WAS VOLUNTARILY, KNOWINGLY, AND INTELLIGENTLY ENTERED WITHOUT COERCION.**

Wilbanks alleges that defense counsel coerced her into entering a guilty plea. Specifically, she claims that defense counsel convinced her that the only way to get a fair trial and adequate representation was to plead guilty.

A guilty plea is valid only if it is entered into “voluntarily, knowingly, and intelligently, with sufficient awareness of the relevant circumstances and likely consequences.” **McNeal v. State**, 951 So.2d 615 (¶6) (Miss. Ct. App. 2007). It is undisputed that the trial court fully explained the consequences of entering a guilty plea, including all of the rights Wilbanks would forfeit in doing so. C.P. 37-39. Additionally, Wilbanks swore in open court that she was entering her plea freely and voluntarily, without coercion, free of threats or promises. C.P. 40. Great weight is given to such statements made under oath. **McNeal**, 951 So.2d at 615 (¶8) (citing **Gable v. State**, 748 So.2d 703, 706 (Miss. 1999).

In **McNeal**, the defendant pled guilty and sought post-conviction relief. This honorable Court disposed of **McNeal**’s argument that the guilty plea was coerced by trial counsel based on the trial court’s succinct explication of the ramifications of entering the plea. **Id.** at 619 (¶11). The **McNeal** court also found that **McNeal**’s statements in open court were controlling because he failed to provide evidentiary support for his allegations on appeal. **Id.**

In the present case, Wilbanks presented nothing more than her own testimony and bare assertions that defense counsel coerced her to plead guilty with ludicrous promises that she could get a fair trial by pleading guilty and not going to trial. At the evidentiary hearing, trial counsel vehemently denied having coerced Wilbanks into pleading guilty. While maintaining that he believed

Wilbanks' best option was to plead guilty, he maintained that he did not coerce her to do so. T. 81, 87, 100. At the evidentiary hearing, the trial court, sitting as the fact-finder, was presented with two versions of events, and clearly placed more credibility on defense counsel's testimony. This honorable Court has stated the following regarding conflicting evidence presented at a post-conviction relief evidentiary hearing. "The trial court, sitting as finder of fact, appeared to have found the defense attorney to be the more credible witness and it is not within our authority to substitute our own view on that question for that of the trial court." **Henderson v. State**, 769 So.2d 210, 214 (¶13) (Miss. Ct. App. 2000) (citing **Reynolds v. State**, 521 So.2d 914, 918 (Miss. 1988)). Accordingly, Wilbanks' allegations regarding the alleged coercion were properly rejected by the trial court sitting as the finder of fact.

II. WILBANKS RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL

Wilbanks claims that trial counsel was constitutionally deficient in failing to adequately investigate the charges against her, failing to “confer with her about the regarding the factual basis of the charges against her,” coercing her to plead guilty, and incorrectly advising her of the consequences of entering the plea.

The familiar two-part test which must be met to prove a claim of ineffective assistance requires the defendant to demonstrate that defense counsel’s performance was deficient and that the deficiency prejudiced the defense of the case. **Lamar v. State**, 983 So.2d 364, 367 (¶10) (Miss. Ct. App. 2008) (citing **Strickland v. Washington**, 466 U.S. 668, 686 (1984)). To establish deficient performance, a defendant must show that his attorney's representation fell below an objective standard of reasonableness. **Leavitt v. State**, 982 So.2d 981, 984 (¶9) (Miss. Ct. App. 2008). To establish prejudice, a defendant must show that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the trial would have been different. **Id.**

Wilbanks asserts that her trial attorney failed to adequately investigate the charges against her or to investigate any defenses she might have to those charges. However, a defendant claiming ineffective assistance of counsel from failure to investigate must state with particularity what the investigation would have revealed and how it would have altered the outcome. **Triplett v. State**, 840 So.2d 727, 731(¶ 11) (Miss. Ct. App. 2002). “[I]n order to establish that failure to investigate a line of defense constituted ineffective assistance, a petitioner must show that knowledge of the uninvestigated evidence would have caused counsel to vary his course.” **King v. State**, 503 So.2d 271, 275 (Miss. 1987). Even with the benefit of an evidentiary hearing Wilbanks failed to simply state what further investigation would have revealed. Appellate counsel merely states that “had

Judy's case been properly investigated, a defense could have been prepared, and any defense would have been better than the total lack of defense."¹ Wilbanks has failed to assert any specifics that would have altered the outcome of her case, and her ineffective assistance claim on this point must fail.

Wilbanks also alleges that trial counsel was deficient in failing "to confer with her regarding the factual basis for the charges against her." However, Wilbanks corresponding argument is nothing more than an attack on the State's evidence against her. It is elementary post-conviction relief law that one who enters a guilty plea waives the right to challenge the sufficiency of the State's evidence against her. **Thornhill v. State**, 919 So.2d 238, 241 (¶13) (Miss. Ct. App. 2005) ((citing **Swift v. State**, 815 So.2d 1230, 1234 (¶13) (Miss. Ct. App. 2001)). However, should Wilbanks claim be read as one alleging that no factual basis for the plea existed, the State would point the Court to the lengthy recitation of the factual basis contained in the record. C.P. 41-43. Additionally, Wilbanks' claims regarding trial counsel's lack of communication was contradicted by defense counsel at the evidentiary hearing, as well as by Wilbanks' own testimony that trial counsel visited her two to three times a week in jail. T. 15.

Lastly, Wilbanks claims that defense counsel incorrectly advised her of the consequences of entering a guilty plea. "The law is clear that, in instances where it is alleged that an attorney gave faulty advice or misinformation in the time preceding the plea hearing, the error is cured if the defendant unequivocally is given the correct information and indicates his understanding of it during the hearing itself." **Henderson**, 769 So.2d at 214 (¶12) (citing **Schmitt v. State**, 560 So.2d 148, 153 (Miss.1990); **Riley v. State**, 748 So.2d 176 (¶ 6) (Miss. Ct. App. 1999)). Because the trial court fully

¹The State is unable to properly cite to the Appellant's Brief as she failed to number the pages of her brief.

advised Wilbanks of the consequences of entering a guilty plea, her claim regarding defense counsel's ineffectiveness for allegedly failing to do so is without merit.

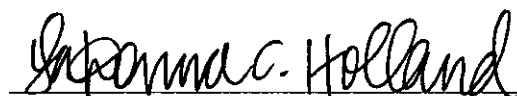
CONCLUSION

As supported by the aforementioned facts and authority, Wilbanks' claims for relief are without merit. Accordingly, the State asks this honorable Court to affirm the trial court's denial of post conviction relief.

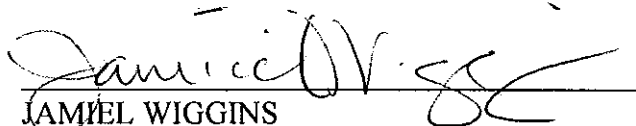
Respectfully submitted,

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CERTIFICATE OF SERVICE

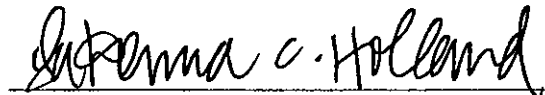
I, La Donna C. Holland, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

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This the 6th day of August, 2008.



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