

**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**CHRISTOPHER JASON BURROUGH**

**APPELLANT**

**VS.**

**NO. 2008-KP-0034-SCT**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR THE APPELLEE**

**APPELLEE DOES NOT REQUEST ORAL ARGUMENT**

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**STATEMENT OF THE CASE**

The grand jury of Carroll County indicted defendant, Christopher Jason Burrough for Burglary of a Dwelling House in violation of *Miss. Code Ann.* § 97-17-23. (Indictment, cp.17). Defendant, a previously convicted felon and no stranger to the criminal justice system, petitioned the court with to plead guilty. (Petition c.p. 35-40). On the 4<sup>th</sup> of May, 2006, defendant did, in open court, assisted by counsel plead guilty. The trial court found his plea to be freely, voluntarily and intelligently given with defendant openly admitting his guilt. (Judgement, c.p. 41). Sentencing was deferred and defendant was allowed to remain on bond. The day of sentencing came and defendant failed to show. A warrant was issued and when law

enforcement found defendant he was caught in the act of theft. Alas, and not surprisingly, sentencing did not bode well for defendant and he got the max of 25 years, \$2,853 restitution, court costs, fees and assessments. (Judgment & Sentence order, c.p. 64).

Within the statutory period for such a filing defendant filed a motion for post-conviction relief. Same was found to be without merit and denied by the trial court. (Order denying relief, c.p. 149).

It is from that denial of post-conviction that defendant now presents this instant appeal.

## **STATEMENT OF FACTS**

Defendant steals, is dishonest and gets caught. More than once.

## **SUMMARY OF THE ARGUMENT**

**A.**

**IF THIS ALLEGATION OF ERROR WERE NOT  
PROCEDURALLY BARRED IT WOULD ALSO BE WITHOUT  
MERIT.**

**B.**

**THIS ALLEGATION OF ERROR IS PROCEDURALLY  
BARRED.**

**C.**

**THE TRIAL COURT DOES NOT HAVE TO FOLLOW ANY  
SENTENCE RECOMMENDATION.**

**D.**

**THERE IS NO CUMULATIVE ERROR.**

## ARGUMENT

### A.

#### **IF THIS ALLEGATION OF ERROR WERE NOT PROCEDURALLY BARRED IT WOULD ALSO BE WITHOUT MERIT.**

In defendant's motion to vacate filed in the trial court he raised two issues for consideration: 1) breach of the plea agreement; and 2) Disproportionate sentence.

Now for the first time on appeal he claims the court failed to consider the factual basis for defendant pleading guilty and a collateral ineffective assistance of counsel claim for failing to object.

Both of these claims are procedurally barred from review.

¶ 9. Edwards makes numerous assertions regarding his attorney's performance, all of which he claims amounted to ineffective assistance of counsel. However, we may only consider those that were presented to the trial court in his motion for post-conviction relief; the others are procedurally barred. *Foster v. State*, 716 So.2d 538, 540(9) (Miss.1998). For brevity's sake we will not list the voluminous assertions that are procedurally barred; we will only address the assertions that were presented to the trial court in Edwards's motion for post-conviction relief.

*Edwards v. State*, 2008 WL 3311843 (Miss.App. 2008).

Also, without waiving any procedural bar to review this issue is without merit as the court specifically asked for a 'factual basis' to support the guilty plea. (Tr.6). And on the very next page defendant admitted his guilt. (Tr.7). By the same token,



there would be no reason for the attorney to object.

This issue is procedurally barred and alternatively without merit in fact and law. Consequently no relief should be granted. *Harris v. State*, 2008 WL 3311848 (¶ 12)(Miss.App. 2008).

**B.**

**THIS ALLEGATION OF ERROR IS PROCEDURALLY BARRED.**

In this allegation of error defendant now claims that the trial court did not inform him at the guilty plea that he had the right to appeal the sentence imposed.

This issue was not presented to the trial court for consideration and is therefore procedurally barred. *Edwards*, supra.

Without waiving any procedural bar to review this issue has recently been addressed by the Mississippi Court of Appeals, to wit:

¶ 11. Lastly, still under the general heading of ineffective assistance of counsel, Cook argues that the trial court erred in informing him during the plea hearing that by pleading guilty he gave up the right to file a direct appeal of “the actions of the [c]ourt.” Cook argues that the trial court failed to inform him that the \*793 right to directly appeal his sentence would still be available regardless of his plea of guilty. Mississippi Code Annotated section 99-35-101 (Rev.2007) provides that “[a]ny person convicted of an offense in a circuit court may appeal to the supreme court, provided, however, an appeal from the circuit court to the supreme court shall not be allowed in any case where the defendant enters a plea of guilty.” Nevertheless, while a conviction from a plea of guilty may not be directly appealed, a defendant may directly appeal the sentence given as a result of that plea. *Trotter v. State*, 554 So.2d 313, 315 (Miss.1989).FN2 However, a trial court is not required to inform a defendant who pleads guilty of his right to appeal the resultant sentence. *Coleman v. State*, 979 So.2d 731, 733(¶ 6) (Miss.Ct.App.2008). Thus, this issue is without merit.

*Cook v. State*, 990 So.2d 788, 792 -793 (Miss.App. 2008).

Accordingly, the State would ask the above rationale be followed in alternatively denying any relief based on this allegation of trial court error.

C.

**THE TRIAL COURT DOES NOT HAVE TO FOLLOW ANY SENTENCE RECOMMENDATION.**

Defendant now complains the trial court violated his due process rights when the judge increased the sentence and did not follow the recommendation.

The transcript is quite informative on this point on page seven the Judge quite bluntly (and correctly) informed the defendant that the judge did not have to accept a recommendation and may impose ANY sentence the law allows. And the defendant understood. (Tr.7). *Vance v. State*, 799 So.2d 100 (Miss.App. 2001).

Interestingly, it would appear there was another sentencing option offered to defendant – which he accepted. To be found on page nine of the plea colloquy.

**By the Court:** Here is the deal. I'm going to leave you out on bond until the 15<sup>th</sup>. If you violate the law in any way between now and then, I'm not going to accept this recommendation, and I will just sentence you to whatever I think you ought to have.

**By the Defendant:** Yes, Sir.

**By the Court:** If you do not appear on the 15th, the same thing applies. Do you understand.

**By the Defendant:** Yes Sir.

What is really interesting is the Court set two conditions and defendant fulfilled both. (Tr. 10-18). Yeah, defendant made those decisions himself and cannot now complain.

There is not merit to this allegation of error and no relief should be granted.

To just state it bluntly, defendant's counsel exhibited not one act of deficient performance. Consequently, defendant fails on both prongs of *Strickland*.

Now, as to the 'cumulative error' claim, there is not a whit to support it.

¶ 50. Busick maintains that, even if no single error mandates our reversal of his conviction, the combined effect of all the errors warrants reversal. This issue is without merit. None of Busick's assignments of error are meritorious and, therefore, there is no basis for reversal for cumulative error. *Coleman v. State*, 697 So.2d 777, 787 (Miss.1997).

*Busick v. State*, 906 So.2d 846 (Miss.App. 2005).

Absolutely no relief should be granted on this last collection of claimed errors.

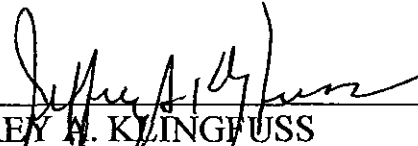
## CONCLUSION

Based upon the arguments presented herein as supported by the record on appeal the State would ask this reviewing court to affirm the trial court denial of post-conviction relief.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

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## CERTIFICATE OF SERVICE

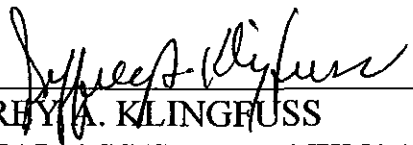
I, Jeffrey A. Klingfuss, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

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This the 14th day of November, 2008.

  
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