IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

ALBERT GARCIA — APPELLANT

VS. — NO. 2008-CP-0262

STATE OF MISSISSIPPI — APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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BRIEF FOR THE APPELLEE

PROCEDURAL HISTORY:

On June 19, 2006 , Albert Garcia, "Garcia" pled guilty to possession of methamphetamine with intent to distribute before the Circuit Court of DeSoto County, the Honorable Robert P. Chamberlin presiding. R. 75. After advising and questioning Garcia and his counsel, Mr. William Travis, the trial court found that his plea was "freely and voluntarily given." R. 95. Garcia was sentenced to receive a thirty year sentence as a repeat offender; with eight to serve and twenty two suspended. R. 11-112.

On October 2, 2007 , Garcia filed a pro se motion for post conviction relief. C.P. 6- 43. The trial court denied relief. C.P. 49-51. From that denial of relief, Garcia filed notice of appeal. C.P. 52.

ISSUES ON APPEAL

I.

WAS A SUPPRESSION MOTION PROPERLY DENIED?

II.

DID GARCIA RECEIVE EFFECTIVE ASSISTANCE OF COUNSEL?

III.

WAS GARCIA'S PLEA KNOWINGLY AND INTELLIGENTLY ENTERED?

STATEMENT OF THE FACTS

On January 19,2006 , Garcia was indicted for possession of methamphetamine with intent as a recidivist with prior convictions for possession of methamphetamine in Texas by a DeSoto County Grand jury. C.P. 61-62.

Prior to Garcia's guilty plea, he was granted a hearing. This was a hearing on his counsel's motion to suppress. R. 3-62. After hearing testimony and cross examination of Officers Stewart and Wright along with Garcia, the trial court denied a motion to suppress. R. 64-67.

On June 19, 2006, Garcia pled guilty to possession of methamphetamine with intent to distribute before the Circuit Court of DeSoto County, the Honorable Robert Chamberlin presiding. R. 75. Garcia was represented by Mr. William F. Travis. R. 75.

Mr. Garcia with the benefit of counsel filled out and filed a "Petition To Enter A Guilty Plea." C.P. 63-65. Garcia was 67 years old. He could read and write. He acknowledged knowing the Constitutional rights he was waiving by pleading guilty. He admitted that he had not been promised anything or coerced into pleading guilty. He was entering an open plea and knew the thirty year maximum sentence. C.P. 65. He admitted to having two prior convictions for possession of methamphetamine in Texas. C.P. 67. Garcia was "fully satisfied" with the advise and counsel provided by his guilty plea counsel. C. P. 67.

At his guilty plea hearing, Garcia acknowledged under oath that everything contained in his Petition was true and correct. R. 82. Garcia acknowledged that he was a high school graduate who could read and write. He was 67 years old. He was not under the influence of drugs or alcohol. R. 78. He testified that he had not been promised anything or coerced. R. 93. He acknowledged knowing the thirty year maximum sentence. R. 90. He acknowledged under oath that he was guilty of possessing methamphetamine with intent to transfer. He did take exception to the prosecution's

statement of the facts. R. 91-92. Garcia acknowledged having two prior drug convictions. R. 86.

After being advised and questioned by the trial court, Garcia admitted that he knew he was waiving his right to a trial with cross examination and a right against self incrimination. R. 87-88. He testified that he understood that he was giving up the right to have the state prove him guilty beyond a reasonable doubt. R. 87.

After advising and questioning Garcia and his counsel, Mr. William Travis , the trial court found that his plea was "freely and voluntarily given." R. 95. Garcia was sentenced to receive a thirty year sentence. However, he had only eight years to serve, and twenty two years suspended. R. 11-112.

On October 2, 2007 , Garcia filed a motion for post conviction relief. C.P. 6- 58. Garcia claimed that his motion to suppress should have been granted. He also claimed that he did not receive effective assistance. C.P. 11. The trial court denied relief. C.P. 49-51. From that denial of relief, Garcia filed notice of appeal. C.P. 52.

SUMMARY OF THE ARGUMENT

1. The record reflects that Garcia waived issues related to the trial court's denial of a motion to suppress when he pled guilty. **Jefferson v. State**, 556 So. 2d 1016, 1019 (Miss. 1989). The trial court found that Garcia's plea was voluntarily and intelligently entered. R. 95. This was after advising and questioning Garcia and his counsel about "his understanding of the nature of the charges and the consequences of his plea." R.75- 95.

In addition, the record reflects credible, substantial corroborated evidence in support of the trial court's denial of a motion to suppress. C.P. 49-51. There was testimony from Southaven police officers Stewart and Wright indicating that drugs were observed "in plain view." This was both outside and inside 382 Alex Cove; the house in which Garcia was residing. R. 3-62.

There was testimony that "consent to enter" was granted by Garcia's son. Garcia admitted that he was asleep at the time. R. 48. After seeing drug paraphernalia through a window , the Officers saw identifiable drug paraphernalia and a bag of methamphetamine in the house near Garcia.

They detained all the occupants until after a search warrant was obtained. This was sufficient credible evidence for supporting the trial court's Order denying relief. There is a lack of evidence that the trial court abused its discretion.

2. There was a lack of evidence of ineffective assistance of counsel. Mr. Travis can not be faulted for the overwhelming evidence against Garcia. This included surveillance which confirmed activities at Garcia's house consistent with drug activity. It also included a known meth addict talking to Garcia about a shipment of drugs. This person had been seen at the Garcia residence previously. R. 6. Nevertheless, Mr. Travis filed a motion to suppress and argued effectively for the suppression of the evidence against Garcia. R. 3-67.

In addition, as a result of Travis's efforts on Garcia's behalf, his sentence as an habitual offender was greatly reduced. Garcia is serving an eight year sentence with the remaining twenty two years of his maximum sentence suspended. R. 111-112. This reduced sentence with treatment for drug addiction was the result of Mr. Travis' efforts on Garcia's behalf. Garcia admitted that he was a recidivist with two prior convictions for possession of methamphetamine. C.P. 67; R. 109.

There were no affidavits in support of Garcia's request for relief. C.P. 9-41. **Lindsay v. State**, 720 So. 2d 182, 184 (¶6) (Miss. 1998); **Smith v State**, 490 So. 2d 860 (Miss. 1986).

3. The record reflects sufficient credible evidence taken from the guilty plea hearing for determining that Garcia's plea was voluntarily, intelligently entered with a factual basis for that plea. R. 95. The trial court both advised and questioned Garcia and his counsel, Mr. Travis , about Garcia's understanding of the possession of methamphetamine charge and the consequences of a possible guilty plea. This included a possible thirty year sentence as an habitual offender. R. 75-95.

This was sufficient record evidence for finding that Garcia understood "the nature of the charge, and the consequences of his plea." **Alexander v. State** , 605 So. 2d 1170, 1172 (Miss. 1992). This valid guilty plea therefore waived factual issues related to Garcia's motion to suppress.

ARGUMENT

PROPOSITION I

THE RECORD SUPPORTS THE DENIAL OF A MOTION TO SUPPRESS.

Mr. Garcia believes that the trial court erred in denying his motion to suppress. He argued in his pro se motion for post conviction relief that no consent to search was granted by his son. He accuses Officers Stewart and Wright of lying at the suppression hearing. He believes that his son did not consent to give the officers access to this residence. He opines that the subsequent search of his residence was illegal. Motion, page 6-40 .

To the contrary, as found by the trial court, a valid guilty plea waives all non- jurisdictional issues. C.P. 50.

In **Jefferson v. State**, 556 So. 2d 1016, 1019 (Miss. 1989), this Court stated that a guilty plea waived a defendant's privilege against self incrimination, the right to confront and cross examine witnesses, the right to a jury trial, and the right to have the prosecution prove every element of the offense beyond a reasonable doubt. As stated in **Jefferson**:

> 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, the right to confront and cross examine the prosecution's witnesses, the right to a jury trial, and the right that the prosecution prove each element of the offense beyond a reasonable doubt. 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. **Williams v. State**, 512 So. 2d 666, 672 (Miss. 1987); **Winters v. State**, 244 So. 2d 1, 2 (Miss. 1971),... 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 principal exceptions to the general rule is that the failure of the indictment 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.

The trial court correctly stated that a guilty plea waives issues related to an alleged illegal

search. It also waives the burden on the prosecution to prove each element of the offense beyond a reasonable doubt.

> A guilty plea waives a claim alleging an illegal search or seizure as well as the prosecution's requirement to prove each element of the offense beyond a reasonable doubt. **King v. State**, 738 So 2d 240 (Miss. 1999); **Jefferson v. State**, 556 So. 2d 1016, 1019 (Miss 1989).C.P. 50.

Although this issue was waived, the appellee would also submit that the record reflects that it is lacking in merit.

The record indicates that a suppression hearing was held on Garcia's motion to suppress. R. 3-62. This was a request to suppress evidence seized at his residence at 382 Alex Cove in Southaven, DeSoto County. It consisted of methamphetamine and drug paraphernalia for using this controlled substance.

After hearing testimony with cross examination, the trial court found that drug paraphernalia was seen "in plain view" prior to any entrance. There was also testimony that "consent" was granted by Garcia's son. Garcia testified that that he was asleep when his son spoke to the South Haven police officers. R. 48-50. Once inside, the officers observed drug paraphernalia and methamphetamine in plain view in the house. This was sufficient evidence for denying the motion to suppress. R. 64-67.

As stated by the trial court in its order denying the motion to suppress:

> First of all, the testimony before the court, regardless of–of course, Mr. Garcia testified he was asleep during this entire thing. The testimony, as the court recalls from the officer, is as they were walking up to knock on the door that he looked to the window and saw a woman with what appeared to be some type of drug paraphernalia in his opinion. Nevertheless, they knocked on the door. They asked for the right to enter the residence. The testimony was that there was no immediate granting of that right but that eventually the occupant indicated that he wanted–the occupant. I believe being the defendant's son, indicated that he wanted to go to sleep but they were welcome to come in. They walked in. The testimony is that they saw the drug paraphernalia being covered up on the kitchen table from the place where they entered

and that it was then in plain view. .. Everyone was held until a search warrant could be obtained. R. 65-66.

Officer Shea Wright testified that he accompanied Officer Stewart to the door. While standing near him, he looked through an open window. He saw a woman place what appeared to be a pipe used for smoking methamphetamine on a table. The table was only a few feet from the opened window. He informed Officer Stewart of what he had observed "in plain view."

Q. Would you describe–how would you–did you just see her in plain view or how would you describe what you saw with the pipe?

A. As I walked by the window, I looked in and then I saw her come into picture. **From that point, later on, she came from the living room area, and I saw the pipe on the kitchen table, and that's when I -while Lieutenant was knocking on the door, I walked up to him and informed him of what I had visually saw.**

Q. How close is the table to the kitchen window approximately?

A. Two feet.

Q. Two feet?

A. Three.

Q. **So it's very close or close to the window?**

A. **Yes, ma'am.** R. 44-45. (Emphasis by Appellee).

Mr. Garcia admitted that he was asleep on a coach. R. 48. He admitted that he did not hear what his son said to Officer Stewart. This was when Officer Stewart testified he was given permission to enter by Garcia's son. According to Stewart's testimony , "Well, you're welcome to come in, but I don't have anything to do with this." R. 10.

Officer Stewart testified that once inside the door way, he could see a metal pipe and a baggy with what appeared to be methamphetamine in it. R. 10. After seeing this, Stewart gave a **Miranda** warning to those present, and detained them. This was until a search warrant was obtained for

searching the rest of the house for drugs and weapons.

In addition, when Garcia was questioned by the trial court a to whether he disagreed in any way with the prosecution's statement of the facts, which included observing drug paraphernalia "in plain view," he replied no. R. 85-86.

In **Evans v. State** 823 So.2d 617, 621 (Miss. App. 2002), the Court affirmed the trial court's denial of a motion to suppress. Where that decision is supported by "substantial credible evidence," it will not be disturbed.

> ¶ 18. In reviewing the denial of a motion to suppress, this Court looks to determine whether the trial court's findings, considering the totality of the circumstances, are supported by substantial credible evidence. Where supported by substantial credible evidence, this Court will not disturb those findings. **Price v. State**, 752 So.2d 1070(¶ 9) (Miss.Ct. App.1999).

In **Bessent v. State** 808 So.2d 979, 984 (Miss. App. 2001), the Court found that the trial court was the best judge of the credibility of the witnesses testifying at a suppression hearing. The trial court's finding would be affirmed unless it was against the overwhelming weight of the evidence.

> The supreme court has noted that the "Fourth Amendment's rule against warrant-less searches is subject to a few specifically established and well delineated exceptions." **Graves v. State**, 708 So.2d 858 (¶ 22) (Miss.1997)(quoting **Katz v. United States**, 389 U.S. 347, 357, 88 S. Ct. 507, 19 L. Ed.2d 576 (1967)). Among the most important exceptions is the consent of the person with control over the premises to be searched, **Townsend v. State**, 681 So.2d 497, 501 (Miss.1996). The totality of the relevant circumstances must be examined in determining whether consent was voluntarily made, a decision initially for the trial judge who is best able to adjudge the credibility of those testifying. **Jones v. State**, 607 So.2d 23, 28 (Miss.1991).Id. at 1221 (¶ 13).

The Appellee would submit that this issue was waived when Garcia, with the benefit of counsel, pled guilty. In addition, there was credible corroborated substantial evidence indicating that the trial court correctly found from "the totality of the circumstances" that consent was granted after

drug paraphernalia was seen "in open view." C.P. 50.

The Appellee would submit that this issue is lacking in merit.

PROPOSITION III

THE RECORD REFLECTS THAT GARCIA RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL.

Mr. Garcia argued in his pro se motion that Mr. Travis, his guilty plea counsel, was ineffective. He was supposedly ineffective because he failed to call Gracia's son to testify at his suppression hearing. Garcia opines that had Mr. Glenn Garcia testified, he would have indicated that he did not grant consent to enter the Garcia residence. Motion page 34-37.

To the contrary, the record from the suppression hearing indicates that Mr. Garcia admitted that he was a heavy sleeper. He was asleep on a couch in his home when the officers arrived. He admitted that he did see or hear what occurred when his son went to the door in response to a knock by Officer Stewart. R. 48-50.

Q. **In all fairness, are you saying that you were asleep on the couch?**

A. **I was asleep on the couch.**

Q. Well, then you weren't awake when they tried to knock on the door or explain that to the Judge.

A. The only time I woke up is when they barged through the house yelling, " I hear tell there's drugs in this house." R. 48. (Emphasis by Appellee).

On cross examination, Garcia admitted that he was "hard of hearing." He admitted that he did not know what happened when officers knocked on his door.

Q. **And you're hard of hearing?**

A. **Yes, ma'am.**

Q. **And you didn't see your son go to the door?**

A. **No.**

...

Q. **You didn't hear him say anything at the door and you didn't hear what the**

officer said while they were outside the door?

A. **Nope.** R. 51. (Emphasis by Appellee).

In addition, there was no affidavit from either Mr. Garcia or his son in support of his allegations included in his pro se motion with the trial court. Motion, page 8-54.

The record reflects that the trial court found no merit to Garcia's claim of ineffective assistance of counsel.

> A thorough review of the court files, including the transcripts of the plea and sentencing hearings, reveals that it is undeniably clear that Garcia's sworn statements contained in Garcia's PCR motion are "overwhelmingly belied by unimpeachable documentary evidence in the record", causing this Court to conclude that Garcia's sworn statements are "a sham" and that no evidentiary hearing is required. **Wright v. State**, 577 So. 2d 387, 390 (Miss. 1991) .C.P. 50.

For Garcia to be successful in his ineffective assistance claim, he must satisfy the two-pronged test set forth in **Strickland v. Washington**, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064-65, 80 L. Ed. 2d 674, 693-95 (1984) and adopted by this Court in **Stringer v. State**, 454 So. 2d 468, 476-477 (Miss. 1984). Garcia must prove: (1) that his counsel's performance was "deficient," and (2) that this supposed deficient performance "prejudiced" his defense.

The burden of proving both prongs rests with Garcia. **McQuarter v. State**, 574 So. 2d 685, 687 (Miss. 1990). Finally, Garcia must show that there is "a reasonable probability" that but for the alleged errors of his counsel, Mr. Travis, the sentence of the trial court would have been different. **Nicolau v. State**, 612 So. 2d 1080, 1086 (Miss. 1992), **Ahmad v. State**, 603 So. 2d 843, 848 (Miss. 1992).

The second prong of the **Strickland v. Washington**,, 466 U.S. 668, 685, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984) is to determine whether there is "a reasonable probability" that but for the alleged errors of Mr. Travis, the result of Garcia's guilty plea would have been different. This is to

be determined from the totality of the circumstances involved in his case.

Appellee would submit that based upon the record we have cited, there is a lack of evidence for holding that there is a reasonable probability that Mr. Travis erred in having advised , and assisted Garcia in submitting a guilty plea petition and pleading guilty under oath.

> As stated in **Strickland**: and quoted in **Mohr v. State** , 584 So. 2d 426, 430 (Miss. 1991): Under the first prong, the movant 'must show that the counsel's performance was deficient and that the deficient performance prejudiced the defense. Here there is a strong presumption of competence. Under the second prong, the movant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.' The defendant must prove both prongs of the test. Id. 698.

Garcia bears the burden of proving that both parts of the tests have been met. **Leatherwood v State**, 473 So. 2d 964, 968 (Miss. 1985).

> The burden of proving ineffective assistance of counsel is on the defendant to show that the counsel's performance was deficient and that the deficient performance prejudiced the defense.

When an appeal involves post conviction relief, the Mississippi Supreme Court has held, "that where a party offers only his affidavit, then his ineffective assistance of counsel claim is without merit." **Lindsay v. State**, 720 So. 2d 182, 184 (6 (Miss. 1998); **Smith v State**, 490 So. 2d 860 (Miss. 1986). There were no affidavits or any statement of proposed witnesses who would provide testimony or evidence in support of any of Garcia's claims in his motion. C.P. 6-41. In Mr. Garcia's Petition he stated he was "fully satisfied" with Mr. Travis' advice and help. C.P. 67.

In **Johnston v . State**, 730 So. 2d 534, 538 (Miss. 1997), the Court stated that the burden of showing prejudice could not be met by merely alleging it.

> Additionally, there is a further requirement which Johnston must hurdle, prejudice. Claims alleging a deficiency in the attorney performance are subject to a general requirement that the defendant affirmatively prove prejudice. **Strickland**, 466 U. S. at 693., 104 S. Ct. at 2067. However, Johnston fails to make any allegations of

> prejudice. As in **Earley**, Johnson must affirmatively prove, not merely allege that prejudice resulted from counsel's deficient performance. *Earley*, 595 So. 2d at 433. Johnston has failed on the second prong of **Strickland**. Having failed to meet either prong of the **Strickland** test, we find that there is no merit to the ineffective assistance of counsel claim raised by Johnston.

In **Ferguson v. State,** 507 So. 2d 94, 97 (Miss. 1987), quoting **Strickland,** 466 U S at 687, 104 S. Ct. 2052.

> Although it need not be outcome determinative in the strict sense, it [deficient assistance of counsel] must be grave enough to 'undermine confidence' in the reliability of the whole proceeding.

Garcia's complained about the failure of his counsel to call his son to testify in his own behalf at his suppression hearing. C.P. 34.

In **Cole v. State**, 666 So. 2d 767, 777 (Miss. 1995), the Supreme Court found no evidence of ineffective assistance for failure to make certain objections during the trial. In doing so the Court also stated that failure to call certain witnesses would not be considered ineffective assistance.

> Complaints concerning counsel 's failure to file certain motions, call certain witnesses, ask certain questions, or make certain objections falls within the ambit of trial strategy.

The record reflects that the transcript from the guilty plea hearing indicates that Garcia admitted that he was asleep. R. 48. He admitted that he was "hard of hearing." He admitted did not hear or know what was said when his son answered a knock on the door. Officer Stewart testified without contradiction that the son granted him permission to enter the premises. R. 10.

While Garcia makes allegations that his son, who answered Officer's Stewart's knock on the door, would deny that he consented to allow the officers to enter, there are no affidavits from that witness or any other witness knowledgeable about what occurred when the officers knocked on the door. C.P. 6-45.

In addition, Officer Shea Wright testified to seeing drug paraphernalia inside the house

through an open window prior to Stewart's seeking permission to enter from Garcia's son. R. 44-45. The Southaven police officers had also previously corroborated an informant's tip by observing activities occurring in and around Garcia's house consistent with drug trafficking. R. 6-8. This included hearing a conversation about drugs being available at 382 Alex Cove. It also included finding what appeared to be methamphetamine on the carpet of a car returning from a trip to 382 Alex Cove. R. 6-7.

The Appellee would submit that this issue is also lacking in merit.

PROPOSITION III

THE RECORD REFLECTS THAT GARCIA'S PLEA WAS VOLUNTARILY AND INTELLIGENTLY ENTERED.

Although not formally addressed by Garcia in his pro se motion, the validity of his guilty plea was implied. For the waiver of issues related to the suppression of the evidence and to the prosecution's requirement to prove all elements of the charge beyond a reasonable doubt are premised upon having a valid guilty plea received by the trial court. A valid guilty plea is one in which the record reflects that the defendant was advised and questioned about his understanding of the charge and possible sentence along with his voluntary waiver of his constitutional right to a trial by jury. There must be record evidence for inferring that the defendant understood "the nature of the charges and the consequences of the plea."

In **Alexander v. State**, 605 So. 2d 1170, 1172 (Miss. 1992), this Court found, in accord with **Boykin v Alabama**, 395 U. S. 238, 242 (1969), that a defendant must be advised and understand "the nature of the charge against him and the consequences of his plea." This is necessary if the plea is to be accepted on the record as voluntarily and intelligently entered.

> A plea of guilty is not binding upon a criminal defendant unless it is entered voluntarily and intelligently. **Myers v. State**, 583 So. 2d 174, 177 (Miss. 1991). A plea is deemed "voluntary and intelligent" only where the defendant is advised concerning the nature of the charge against him and the consequences of the plea. See **Wilson v. State**, 577 So. 2d 394, 396-97(Miss. 1991). Specifically, the defendant must be told that a guilty plea involves a waiver of the right to a trial by jury, the right to confront adverse witnesses, and the right to protection against self incrimination. **Boykin v. Alabama**, 395 U.S. 238, 23 L. Ed. 2d 274, 89 S. Ct. 1709 (1969). Rule 3.03 of the Uniform Criminal Rules of Circuit Court Practice additionally requires, inter alia, that the trial judge "inquire and determine" that the accused understands the maximum and minimum penalties to which he may be sentenced.

The record from the guilty plea hearing indicates that Garcia was advised and questioned by the trial court as to his understanding of the nature of the charge and the consequences of his guilty

plea. R. 75-112. As stated under the statement of the facts, Garcia filled out and filed a "Petition To Enter A Guilty Plea." C.P. 63-68 . In addition, the record from the guilty plea hearing was included in the record. R. 75-112.

These documents indicate, as found by the trial court, that Garcia stated under oath that he understood the Constitutional rights he was waiving by pleading guilty. C.P. 86-90. These were his right to a trial with cross examination as well as his right against self incrimination. Garcia admitted that he had not been coerced or promised anything in exchange for his guilty plea. R. 93. He admitted that he knew the thirty year maximum and a five thousand dollar fine for possession of methamphetamine. R. 90. He admitted that he was giving up his right to have the prosecution prove all the elements of the charge against him. R. 87. This was also acknowledged this facts in his Petition To Enter A Guilty Plea. C.P. 65.

Therefore, there was credible, substantial evidence in support of the trial court's Order denying relief. to Garcia's pro se motion for post conviction relief. C.P. 49-50.

CONCLUSION

The trial court's denial of Garcia's motion for post conviction relief should be affirmed for the reasons cited in this brief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, W. Glenn Watts, 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 25th day of July, 2008.

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