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IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

MICHAEL A. BLISS

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APPELLANT

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SUPREME COURT
COURT OF APPEALS**

VS.

NO. 2008-CP-0288

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE ISSUES

- I. WHETHER THE DEFENDANT KNOWINGLY AND INTELLIGENTLY ENTERED A PLEA OF “GUILTY.”**
- II. WHETHER THE DEFENDANT RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL.**

STATEMENT OF THE CASE

Michael Bliss was convicted of “Possession of Precursor Chemicals.” [C.P. 9]. Bliss filed notice of a MOTION FOR POST CONVICTION COLLATERAL RELIEF in the Circuit Court of Warren County on January 17, 2008. [C.P. 4]. This motion was denied by order of Hon. Frank G. Vollor, Circuit Judge, on January 23, 2008. [C.P. 54]. From this order, Bliss, pro se and in forma pauperis, filed a notice of appeal on February 15, 2008. [C.P. 66].

STANDARD OF REVIEW

The appellate court will not disturb a lower court's findings of fact when reviewing a denial of a petition for post-conviction relief. *Lambert v. State*, 941 So. 2d 804, 807 (Miss. 2006). However, where questions of law are concerned, the court will review issues *de novo*. *Id.*

SUMMARY OF THE ARGUMENT

The State asserts that the record reflects that Bliss knowingly and intelligently entered a plea of "guilty" and that he has presented no evidence tending to show that he was deceived or misled into believing that he was certain or even probable to be sentenced to drug court. The State further asserts that the assistance of trial counsel was constitutionally sufficient.

ARGUMENT

I. THE DEFENDANT KNOWINGLY AND INTELLIGENTLY ENTERED HIS PLEA.

Bliss first argues that his plea was not knowingly and intelligently entered, and, thus, was involuntary. A guilty plea must be knowingly and intelligently entered. *Boykin v. Alabama*, 395 U.S. 238, 243 (1969). "Ignorance, incomprehension, coercion, terror or other inducements, both subtle and blatant, threaten the constitutionality of a guilty plea." *Id.* A defendant voluntarily pleading guilty must have been advised of the charges against him and the consequences of his plea. *Alexander v. State*, 605 So. 2d 117, 1172 (Miss. 1992). Specifically, the defendant must be informed that his plea waives the right to a trial by jury, the right to confront adverse witnesses, and the right against self-incrimination. *Id.* Rule 3.03 of the Uniform Rules of Circuit and County Court require, additionally, that the trial judge specifically address the defendant to "inquire and determine" that the defendant understands the maximum and minimum penalties to which he can be sentenced. The defendant's plea is voluntary despite any erroneous advice given

the defendant by counsel, so long as the defendant's misconception is corrected by the court during the plea colloquy. *Harris v. State*, 806 So. 2d 1127, 1130 (Miss. 2002).

Bliss here contends that when he entered his plea of guilty he was under the impression, so given by counsel, that he would "quite possibly get Drug Court upon on Open plea." In spite of the conclusions Bliss may have developed regarding the probabilities of various possible sentences, the record clearly reflects that he understood his sentencing request was not guaranteed and the maximum sentence was possible.

The Court: Okay. Mr. Bliss, it's my understanding, as just related here in front of you, that you're going to enter an open plea of guilty to this charge. Open plea means that there's no agreement as to any sentence. It's completely within my discretion as to what to do.

The Defendant: Yes, sir.

The Court: And I understand during that you're going to request to enter the Drug Court, but that has not be guaranteed or anything else.

The Defendant: Yes, sir.

The Court: You may get any sentence up to the maximum. You understand that?

The Defendant: Yes, sir.

...

The Court: Do you understand that the maximum sentence that can be imposed upon you on a plea of guilty is 30 years in the Mississippi Department of Corrections?

The Defendant: Yes, sir.

The Court: Maximum fine is 1 million dollars. The minimum fine is \$5,000. And it says minimum sentence of one year. Is that just because it's a felony?

Mr. Woods: That's right, Your Honor.

The Court: But it's not in - -

Mr. Woods: It's not state in the statute.

The Court: Okay. Okay. So up to 30 years. I can give you anything up to 30 years and any fine up to 1 million dollars. I have to fine you at least 5,000. You understand that?

The Defendant: (Nods Affirmatively.)

[C.P. 25-26, 30].

The State accepts the relevant law cited by the defendant illustrating the invalidity of involuntary pleas. Nevertheless, the burden of proof to show involuntariness in post-conviction relief hearings is placed on the petitioner. *Hannah v. State*, 943 So. 2d 20, 25 (Miss. 2006). Relying solely upon his assertion that his attorney led him to believe that he might “quite possibly” be sent to Drug Court does not even state an actionable claim, much less meet his burden.

II. THE ASSISTANCE OF THE PETITIONER’S TRIAL COUNSEL WAS CONSTITUTIONALLY SUFFICIENT.

Bliss contends that he received ineffective assistance of counsel, offering as evidence a letter from Edwin Wood, trial counsel, alerting Bliss that Wood intended to withdraw as counsel [C.P. 44] and the motion to withdraw [C.P.46], which was dropped.

A defendant seeking to withdraw a guilty plea citing ineffective assistance of counsel must show that, but for counsel’s errors, there is a reasonable probability he would not have pleaded guilty, but would have insisted upon going to trial, and the outcome would have been different. *Hannah*, 943 So. 2d at 24. A post-conviction relief petition must include “[a] specific statement of the facts which are not within the prisoner’s personal knowledge[,] ... how or by whom said facts will be proven[, and] [a]ffidavits of the witnesses who will testify and copies of documents or records that will be offered...” Miss. Code Ann. § 99-39-9(1)(e). Bliss alleges that his attorney had “divided allegiances” and would have afforded Bliss better representation had Bliss paid his attorney’s fees in a timely manner. This claim, however, is neither specific nor detailed, as required by this court. *Robertson v. State*, 669 So. 2d 11, 13 (Miss. 1996). His claim that his attorney never advised him that he might be rejected for Drug Court is not supported by evidence beyond his personal knowledge contrary to Miss. Code Ann. § 99-39-9(1)(e), neither is

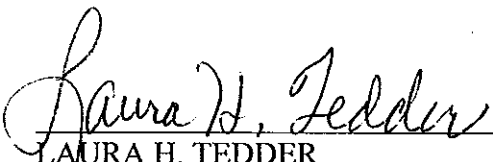

his claim that trial counsel was not diligent in seeking a more favorable sentence for him when he was rejected for Drug Court because counsel was disgruntled and angry. And, holding these without consideration, Bliss has made no attempt to convince the court that different representation might have yielded a different outcome.

CONCLUSION

Because Bliss has proved neither that his guilty plea was involuntary nor that the assistance of his counsel was ineffective, the State respectfully requests that this Honorable Court affirm the trial court's order dismissing the petition for post-conviction relief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

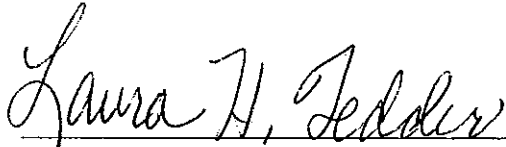
I, Laura H. Tedder, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

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This the 20th day of August, 2008.



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