

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

**KARL HUNT**

**APPELLANT**

**VS.**

**NO. 2008-CP-0493**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR THE APPELLEE**

**APPELLEE DOES NOT REQUEST ORAL ARGUMENT**

**JIM HOOD, ATTORNEY GENERAL**

**BY: LAURA H. TEDDER  
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 .....	ii
STATEMENT OF THE ISSUES .....	1
STATEMENT OF THE CASE .....	1
SUMMARY OF THE ARGUMENT .....	2
ARGUMENT .....	2
I.    THE INDICTMENT DELIVERED BY THE GRAND JURY WAS COMPLETE AND CORRECT .....	2
II.   ANY ALLEGED NON-JURISDICTIONAL DEFICIENCIES IN THE INDICTMENT WERE WAIVED WHEN HUNT PLED GUILTY .....	3
III.  HUNT HAS NOT DEMONSTRATED SPECIFIC FACTS THAT RISE TO THE LEVEL OF INEFFECTIVE ASSISTANCE OF COUNSEL .....	4
IV.   THE SIGNATURE OF THE FOREMAN IS PRESENT ON THE INDICTMENTS AND THE INDICTMENTS ARE VALID UNDER RULE 7.06 .....	4
V.    ANY ISSUE WITH THE CAPIAS WAS WAIVED BY HUNT'S GUILTY PLEA .....	5
CONCLUSION .....	6
CERTIFICATE OF SERVICE .....	7

## TABLE OF AUTHORITIES

### FEDERAL CASES

<i>Strickland v. Washington</i> , 466 U.S. 668 (1984) .....	4
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### STATE CASES

<i>Beene v. State</i> , 910 So.2d 1152 (Miss. Ct. App. 2005) .....	2
<i>Brooks v. State</i> , 573 So.2d 1350, 1352 (Miss. 1990) .....	5
<i>Carroll v. State</i> , 963 So.2d 44,45 (Miss. Ct. App. 2007) .....	3
<i>Chandler v. State</i> , 883 So.2d 614, 615-16 (Miss. Ct. App. 2004) .....	3
<i>Knox v. State</i> , 502 So.2d 672, 676 (Miss. 1987) .....	4
<i>Morris v. State</i> , 767 So.2d 255, 258-59 (Miss. Ct. App. 2000) .....	3
<i>Roby v. State</i> , 861 So.2d 368 (Miss. Ct. App. 2003) .....	5
<i>Wilcher v. State</i> , 479 So.2d 710, 713 (Miss. 1985) .....	4

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**BRIEF FOR THE APPELLEE**

**STATEMENT OF THE ISSUES**

- I. The indictments delivered by the grand jury were complete and correct.
- II. Any alleged non-jurisdictional issues were waived by Hunt's guilty plea.
- III. Hunt has not demonstrated specific facts that rise to the level of ineffective assistance of counsel.
- IV. The signature of the grand jury foreman was present and the indictments were valid under Rule 7.06.
- V. Hunt waived any issue with the capias by pleading guilty.

**STATEMENT OF THE CASE**

In the Circuit Court of Lee County on June 5, 2007, Karl Hunt voluntarily entered a plea of guilty to the sale of a schedule II controlled substance in cause number CR06-798 and to the sale of cocaine in cause number CR06-799. (C.P. 53-54) Hunt was sentence to a term of 20 years in prison with 8 suspended on the first offense and thirty years suspended on the second

offense. (C.P. 67-68) He was also fined \$10,000 with \$7,000 suspended. (C.P. 67-68)

On February 1, 2008, Hunt's Motion for Post Conviction Relief was denied in the Circuit Court of Lee County. (C.P. 38) He subsequently filed a Motion for Post-Conviction Relief in the Mississippi Court of Appeals to which the State now responds.

### **SUMMARY OF THE ARGUMENT**

The Motion for Post Conviction Relief should be denied. Hunt raises no issues that constitute error in the indictment under Rule 7.06. Further, Hunt is barred from asserting any non-jurisdictional defects since he has waived any such alleged defects by his guilty plea. Since there were no problems in the indictment and no other specific facts were alleged, Hunt is unable to show that he received ineffective assistance of counsel.

### **ARGUMENT**

A trial court's denial of a motion for post-conviction relief shall not be reversed unless the decision was clearly erroneous. If questions of law are raised, the standard is *de novo*. *Beene v. State*, 910 So.2d 1152 (Miss. Ct. App. 2005). The decisions of the trial court are not clearly erroneous and should be affirmed.

#### **I. THE INDICTMENT DELIVERED BY THE GRAND JURY WAS COMPLETE AND CORRECT.**

Under the Mississippi Uniform Rules of Circuit and County Court 7.06, an indictment is required to have the following seven elements;

- 1) The name of the accused;
- 2) The date on which the indictment was filed in court;
- 3) A statement that the prosecution is brought in the name and by the authority of the State of Mississippi;
- 4) The county and judicial district in which the indictment is brought;
- 5) The date, and, if applicable, the time at which the offense was alleged to have been committed. Failure to state the

- correct date will not render the indictment insufficient;
- 6) The signature of the foreman of the grand jury issuing it; and
- 7) The words against the peace and dignity of the state.

U.R.C.C. 7.06. In both indictments against Hunt, all seven elements are present including the signature of the Foreman of the grand jury and the date and time that the indictment was filed in court. (C.P. 31, 35) Hunt's contention that the indictment fails because it is missing required elements is unfounded. The record clearly and unequivocally reflects that the indictment is complete. This issue is without merit and the decision of the trial court should be affirmed.

## **II. ANY ALLEGED NON-JURISDICTIONAL DEFICIENCIES IN THE INDICTMENT WERE WAIVED WHEN HUNT PLED GUILTY.**

The Mississippi Supreme Court has held that the "legal evidence of the concurrence of twelve or more of the grand jurors in finding and presenting the indictment is fully established by the signing thereof on the part of the foreman and the marking of it 'filed' by the clerk of the court." *Carroll v. State*, 963 So.2d 44,45 (Miss.Ct.App.2007) citing *Morris v. State*, 767 So.2d 255, 258-59 (Miss.Ct.App.2000). Additionally, entry of a valid guilty plea waives all non-jurisdictional defects in the indictment. Lack of an accompanying affidavit from the grand jury foreman is a non-jurisdictional defect. *Id.* at 46 (citing *Chandler v. State*, 883 So.2d 614, 615-16 (Miss.Ct.App.2004).

Despite the absence of an affidavit in the court records, the indictments were signed by the Foreman, the Assistant District Attorney, and marked "Filed and Entered" by the clerk of the court. (C.P. 31, 35) Hunt's guilty plea waives any claim of error since the lack of an affidavit is a non-jurisdictional defect.

**III. HUNT HAS NOT DEMONSTRATED SPECIFIC FACTS THAT RISE TO THE LEVEL OF INEFFECTIVE ASSISTANCE OF COUNSEL.**

Trial counsel is presumed to be competent. If counsel was reasonably effective then he has met the constitutional standard regardless of the accused's personal evaluation of counsel's performance. An indigent defendant is entitled to effective assistance, not perfect assistance. *Strickland v. Washington*, 466 U.S. 668 (1984). Therefore, the defendant must prove that his counsel's performance was deficient and that the performance so prejudiced him as to deprive him of a fair trial. The burden is on the defendant to show both. *Wilcher v. State*, 479 So.2d 710, 713 (Miss. 1985). The defendant must allege with "specificity and detail" that his counsel's performance was deficient and that he was prejudiced. *Knox v. State*, 502 So.2d 672, 676 (Miss. 1987).

Hunt has only alleged that his counsel failed to object to the indictment. However, the record clearly shows that the indictment contains no errors. The signature of the grand jury foreman is present on the indictment. (C.P. 31, 35) The indictment is complete and correct so there was no reason to object. Further, even if there had been a defect in the indictment, Hunt would have to show that failure to object so substantially prejudiced him that he was deprived of a fair trial.

This issue is without merit and the decision of the trial court should be affirmed.

**IV. THE SIGNATURE OF THE FOREMAN IS PRESENT ON THE INDICTMENTS AND THE INDICTMENTS ARE VALID UNDER RULE 7.06.**

From the record there is no evidence that any of the seven elements of a valid indictment is missing. (C.P. 30-31, 34-35) Hunt argues that the signature of the grand jury foreman is missing, but it seems clear that the indictments were signed on pages 31 and 35 of the record. There are no facts supporting Hunt's argument of invalidity. This issue is without merit and the

decision of the trial court should be affirmed.

**V. ANY ISSUE WITH THE CAPIAS WAS WAIVED BY HUNT'S GUILTY PLEA.**

The record contains only a copy of the warrant as attached to Hunt's Motion for Post Conviction Relief, whether or not it has a signature is irrelevant. (C.P. 12-13) Again, because of Hunt's valid guilty plea, he has admitted "all elements of a formal criminal charge and [it] operates as a waiver of all non-jurisdictional defects contained in an indictment against a defendant." *Brooks v. State*, 573 So.2d 1350, 1352 (Miss. 1990). In *Roby v. State*, 861 So.2d 368 (Miss.Ct.App.2003), as in this case, Roby asserted that the arrest warrant was not signed. However, the court found that this deficiency was non-jurisdictional "at best" and it may not be raised for the first time in an application for post-conviction relief or on direct appeal absent a showing of cause and actual prejudice. *Id.* at 370. The original capias is not in the record, but even the capias presented by Hunt may not be challenged because of his guilty plea.

This issue is without merit and the judgment of the trial court should be affirmed.





## CONCLUSION

Hunt's allegations of defects in the indictments against him are incorrect and there are no jurisdictional issues that would overcome his guilty plea. Further, Hunt has shown no evidence of ineffective assistance of counsel. Therefore, the Motion for Post-Conviction Relief was properly denied by the trial court and said denial should be affirmed by this Court.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

BY:   
LAURA H. TEDDER  
SPECIAL ASSISTANT ATTORNEY GENERAL  
MISSISSIPPI BAR NO. 

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

## CERTIFICATE OF SERVICE

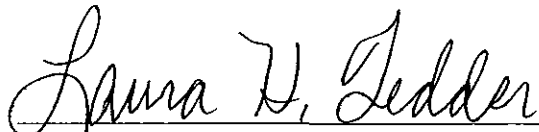
I, Laura H. Tedder, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

Honorable James L. Roberts, Jr.  
Circuit Court Judge  
P. O. Drawer 1100  
Tupelo, MS 38802-1100

Honorable John R. Young  
District Attorney  
P. O. Box 212  
Corinth, MS 38834

Karl Hunt, #R3122  
C.M.R.C.F.  
33714 MS Hwy. 35  
Vaiden, Mississippi 39176

This the 6th day of October, 2008.



LAURA H. TEDDER  
SPECIAL ASSISTANT ATTORNEY GENERAL

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