

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

RODRICK MAGGITT

APPELLANT

VS.

NO. 2008-CP-1057-COA

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 Grenada County indicted defendant, Rodrick Maggitt for Statutory Rape in violation of *Miss. Code Ann.* § 97-3-65(1)(b)(Indictment, cp.9 & 12). Defendant, aided by counsel, pled guilty and was sentenced to 20 years, 7 suspended, 13 to serve with 5 years post-release supervision. (Judgment & Sentence, c.p. 13 & 14). Within the statutory period defendant filed a motion in the form of post-conviction relief, which was denied by the trial court. (Order denying, c.p. 40).

After denial of his motion, defendant timely noticed this instant appeal.

STATEMENT OF FACTS

Defendant was caught *in flagrante delicto* with a child under 14, not his spouse and he being more than 24 months older, (about 360 months older). Two eye-witnesses could have testified to same and gave statements.

SUMMARY OF THE ARGUMENT

I.

DEFENDANT HAD CONSTITUTIONALLY EFFECTIVE ASSISTANCE OF COUNSEL AND SHOULD NOT NOW BE 'EXONERATED'.

II.

THE TRIAL COURT HAD JURISDICTION AND NO EVIDENCE OF GUILT NEED BE PROVEN AT A GUILTY PLEA.

III.

DEFENDANT WAIVED HIS RIGHT TO A SPEEDY TRIAL.

IV.

THE INDICTMENT WAS NOT FATALY DEFECTIVE.

ARGUMENT

I.

DEFENDANT HAD CONSTITUTIONALLY EFFECTIVE ASSISTANCE OF COUNSEL AND SHOULD NOT NOW BE 'EXONERATED'.

In this initial allegation of error by the trial court in denying the motion for post-conviction relief defendant, brazenly, seeks exoneration from this Court. Such relief is not warranted in fact or law.

Gleaning from various parts of the brief, defendant at one point or another claims his attorney was ineffective. Specifically, claiming he did not investigate the facts, file a motion for speedy trial, did not detect defects in the indictment and coerced defendant into pleading guilty.

However, it is worth noting that defendant waived all of these constitutional issues when he pled guilty. Further, all were amenable to correction and were not necessarily dispositive of the charge. *Lockhart v. State*, 980 So.2d 336 (¶7)(Miss.App. 2008). Further, defendant has not proffered on bit of evidence to support any of his claims.

Accordingly, defendant cannot meet either prong of a *Strickland* analysis and the trial court was most assuredly correct in denying the motion. *Id.* at ¶¶6-11.

No relief should be granted on this allegation of trial court error.

II.
THE TRIAL COURT HAD JURISDICTION AND NO EVIDENCE OF
GUILT NEED BE PROVEN AT A GUILTY PLEA.

This next allegation of error repeatedly claims the indictment was defective for failure to have the affidavit of the grand jury foreman.

The law is clear:

¶ 15. . . . this Court in *Chandler v. State*, 883 So.2d 614, 616(¶ 5) (Miss.Ct.App.2004) reaffirmed a prior holding that “an argument asserting defectiveness of an indictment based on the lack of an accompanying affidavit from the grand jury foreman is a non-jurisdictional defect which is waived” upon entry of a guilty plea.

Morgan v. State, 966 So.2d 204 (Miss.App. 2007).

So, such an alleged defect is amenable to correction and second is non-jurisdictional and did not deprive the trial court of jurisdiction.

¶ 10. The trial court must have before it evidence “sufficiently specific to allow the court to determine that the defendant's conduct was within the ambit of that defined as criminal.” *Lott v. State*, 597 So.2d 627, 628 (Miss.1992) (quoting *United States v. Oberski*, 734 F.2d 1030, 1031 (5th Cir.1984)). The fact that a defendant entered a plea of guilty is not alone sufficient to form a factual basis for the acceptance of the plea. *Hannah v. State*, 943 So.2d 20, 26-27(¶ 16) (Miss.2006) (citing *Lott v. State*, 597 So.2d 627, 628 (Miss.1992)). However, our supreme court has explained that a guilty plea coupled with “an independent evidentiary suggestion of guilt” is sufficient to form a factual basis. *Hover v. State*, 773 So.2d 421, 424(¶ 12) (Miss.2000); see also *Corley v. State*, 585 So.2d 765, 767 (Miss.1991) (“Fair inference favorable to guilt may facilitate the finding.”). “The law does not require that a defendant admit every aspect of a charge against him.” *Gazzier v. State*, 744 So.2d 776, 779(¶ 7) (Miss.1999) (holding that a factual basis existed to support a guilty plea to rape notwithstanding that defendant

denied the element of penetration at the plea hearing). The facts required to be shown are determined by the elements of the crime charged. Corley, 585 So.2d at 767.

Ealey v. State, 967 So.2d 685 (Miss.App. 2007).

The transcript (c.p. 25-25) provided ample facts that could have been proven as to each element of the offense. Couple with the defendant's admission (three times) that he was guilty.

There is no merit to this allegation of error and no relief should be granted.

III.
DEFENDANT WAIVED HIS RIGHT TO A SPEEDY TRIAL.

The defendant was informed of his constitutional right to a speedy trial (c.p. 20) and he waived that right when he pled guilty.

¶ 25. Madden fails to prove his representation was deficient because, upon entering a guilty plea, he waived his right to a speedy trial. The supreme court has held that “a valid guilty plea operates as a waiver of all non-jurisdictional rights or defects which are incident to trial [including] the right to a speedy trial, whether of constitutional or statutory origin.” *Anderson v. State*, 577 So.2d 390, 391-92 (Miss.1991). Therefore, counsel's failure to raise a speedy trial claim did not constitute ineffective assistance. *Id.* at 392.

Madden v. State, 991 So.2d 1231 (Miss.App. 2008).

Such a claim is not ineffective assistance nor is it legally sufficient to garner post-conviction relief. *Madden*.

Consequently, the trial court was correct in denying the motion based upon such a claim and no relief should now be granted.

IV.
THE INDICTMENT WAS NOT FATALY DEFECTIVE.

As noted above the lack of the affidavit of the grand jury foreman is non-jurisdictional. *Morgan, supra*.

Further, if counsel had raised that point of law it could have been quickly corrected by asking the clerk to make a copy of the foreman's affidavit. Such things that if presented to the trial court could be corrected are not sufficient to warrant granting a motion for post-conviction relief or sustaining a claim of ineffective assistance. *Jones v. State*, 770 So.2d 578 (¶ 7) (Miss.App. 2000).

Accordingly, the trial court had jurisdiction and it was not deficient performance for defense counsel in no mentioning minor flaws that were of form and non-jurisdictional.

No relief should be granted on this allegation of error.

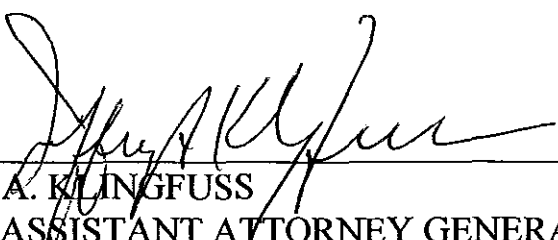
CONCLUSION

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,

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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 20th day of November, 2008.



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