

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

DASHAWN ROMALED THOMPSON

APPELLANT

VS.

NO. 2008-CP-1682-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

JIM HOOD, ATTORNEY GENERAL

**BY: JEFFREY A. KLINGFUSS
SPECIAL ASSISTANT ATTORNEY GENERAL
MISSISSIPPI BAR NO. 9390**

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

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STATEMENT OF THE CASE

Defendant, Dashawn Romale Thompson, was indicted in a three count indictment for Possession of a Controlled Substance (Cocaine) with Intent to distribute; Possession of a Controlled Substance (Marijuana) with Intent to Distribute; and Possession, Receipt, acquisition or disposal of a firearm. A motion to suppress was filed and denied. Subsequently, aided by counsel, defendant petitioned the court to plead guilty to the Possession charges with the gun charge being passed to the files.

After pleading guilty and being sentenced, defendant filed a motion for post-conviction relief which was denied by the trial court. C.p. 71-73.

Defendant timely noticed this instant appeal. C.p. 86-91.

STATEMENT OF FACTS

Narcotics agents developed evidence that defendant was a major drug dealer. A search warrant was obtained and executed resulting in the agents finding defendant in possession of over 2 pounds of marijuana and over an ounce of cocaine and firearms. In a plea deal negotiated by his attorney defendant pled guilty to two counts of a three count indictment with the last charge being passed to the files.

SUMMARY OF THE ARGUMENT

I.

DEFENDANT WAIVED ANY CHALLENGE TO VALIDITY OF THE SEARCH WARRANT UPON ENTERING HIS PLEA OF GUILTY.

II. & III.

DEFENDANT HAD CONSTITUTIONALLY EFFECTIVE ASSISTANCE OF COUNSEL.

ARGUMENT

I.

DEFENDANT WAIVED ANY CHALLENGE TO VALIDITY OF THE SEARCH WARRANT UPON ENTERING HIS PLEA OF GUILTY.

In this initial claim of trial court error in denying the motion for post-conviction relief, defendant seeks to assert that the search warrant leading to his arrest

(and plea of guilty) was invalid.

¶ 3. A trial court's denial of post-conviction relief will not be reversed absent a finding that the trial court's decision was clearly erroneous. *Smith v. State*, 806 So.2d 1148, 1150(¶ 3) (Miss.Ct.App.2002). However, when issues of law are raised, the proper standard of review is de novo. *Brown v. State*, 731 So.2d 595, 598(¶ 6) (Miss.1999).

Davis v. State, 967 So.2d 1269 (Miss.App. 2007).

The only issues raised is that the search warrant was invalid... there is no claim within the allegation of error that defendant's plea was involuntary. Defendant just wants to argue that the search warrant was invalid.

This defendant has a strong criminal history and is serving two sentences. He's guilty he admitted so.

¶ 4. Upon the entry of a valid guilty plea, certain challenges are waived by the defendant. In Davis's case, all of his issues on appeal were waived when he pled guilty to felon in possession of a deadly weapon. We note that Davis does not argue that his guilty plea was invalid. Certain Fourth Amendment violations, including illegal searches, are waived by a guilty plea. *King v. State*, 738 So.2d 240-41 (¶¶ 4-5) (Miss.1999); *Thornhill v. State*, 919 So.2d 238, 241(¶ 16) (Miss.Ct.App.2005). Davis waived his right to an initial appearance. *Battaya v. State*, 861 So.2d 364, 366 (¶¶ 7-8) (Miss.Ct.App.2003). Davis has also waived his right to challenge the sufficiency of the State's evidence. *Young v. State*, 797 So.2d 239, 246(¶ 17) (Miss.Ct.App.2001). For the foregoing reasons, we find no merit to Davis's issues on appeal.

Davis v. State, 967 So.2d 1269 (Miss.App. 2007).

It is the succinct position of the State that defendant waived any and all claims to the validity of the search warrant leading to his arrest when he pled guilty. The trial court was correctly in denying the petition for relief and no relief should be based upon this appeal.

II. & III.

DEFENDANT HAD CONSTITUTIONALLY EFFECTIVE ASSISTANCE OF COUNSEL.

Within these last two allegation of trial court error defendant avers his trial counsel was ineffective.

The trial court specifically, succinctly and clearly addressed this issues with findings of fact and conclusions of law supported by citation to relevant authority. The state will rely on those decisions of the trial court as found in the order denying relief. C.p. 71-73.

Additionally, it would appear there is a paucity of supporting documentation with the original petition seeking relief. Consequently, there is another basis for now denying relief.

¶ 13. Garcia presented no affidavits with his petition. Because he merely relies on the assertions in his brief, Garcia does not meet the requirements of *Vielee* [*v. State*, 653 So.2d 920, 922 (Miss. 1995)]. Garcia also fails to meet the requirements of *Strickland*. This issue has no merit.

Garcia v. State, 2009 WL 175886, 2 (Miss.App. 2009)(decided 1-27-2009).

Additionally, looking to the fullness of the record it is abundantly clear this defendant had competent counsel, that was actively involved in his case(s) and managed to get one charge dropped.

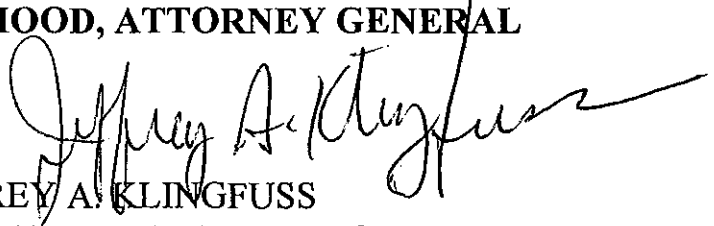
There is absolutely no merit to this allegation of error and no relief should be granted.

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

A handwritten signature in black ink, appearing to read "Jeffrey A. Klingfuss", is written over the typed name and title of the Special Assistant Attorney General.

BY: JEFFREY A. KLINGFUSS
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

CERTIFICATE OF SERVICE

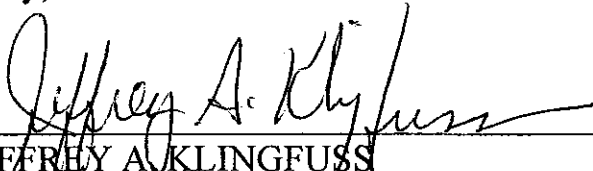
I, Jeffrey A. Klingfuss, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

Honorable Jerry O. Terry, Sr.
Circuit Court Judge
421 Linda Drive
Biloxi, MS 39531

Honorable Cono Caranna
District Attorney
Post Office Drawer 1180
Gulfport, MS 39502

Dashawn Thompson #M5143
SMCI
C - 1-97
Post Office Box 1419
Leakesville, MS 39451

This the 8TH day of May, 2009.



JEFFREY A. KLINGFUSS
SPECIAL ASSISTANT ATTORNEY GENERAL

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