

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

**JASON EDWARD WILLIAMS**

**APPELLANT**

**VS.**

**NO. 2009-CA-0338-COA**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR THE APPELLEE**

**APPELLEE DOES NOT REQUEST ORAL ARGUMENT**

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**NO. 2009-CA-0338-COA**

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**BRIEF FOR THE APPELLEE**

**STATEMENT OF ISSUES**

- I. WILLIAMS' MOTION FOR POST-CONVICTION RELIEF IS PROCEDURALLY BARRED.
- II. WILLIAMS' GUILTY PLEA WAS MADE KNOWINGLY, VOLUNTARILY, AND INTELLIGENTLY.
- III. A FACTUAL BASIS EXISTED FOR THE TRIAL COURT'S ACCEPTANCE OF WILLIAMS' GUILTY PLEA.
- IV. THERE IS NO REQUIREMENT THAT THE TRIAL COURT INFORM THE DEFENDANT THAT SENTENCING IS NOT A JURY FUNCTION.
- V. WILLIAMS WAS ADVISED THAT THE ENTRY OF A GUILTY PLEA WAIVES THE RIGHT TO A DIRECT APPEAL.
- VI. WILLIAMS DID NOT RECEIVE INEFFECTIVE ASSISTANCE OF COUNSEL.

**STATEMENT OF FACTS**

On the night of October 24, 2003, twenty-one-year-old Jason Edward Williams purchased alcohol for himself and five minor passengers. C.P. 115. The youngest passenger was a mere thirteen years old, and the oldest passenger was only seventeen years old. C.P. 115. Williams and

some of the teenagers began drinking while Williams drove his friends around. For reasons unknown, Williams began speeding on a hilly road and turning his headlights on and off while cresting the hills. C.P. 116. As a result of this foolish behavior, Williams ran off the road. C.P. 116. Williams' thirteen-year-old passenger, Ashley Nicole Flowers, was killed, and passenger Brian Flowers was seriously injured. C.P. 115.

Williams was indicted for Count I culpable negligence manslaughter and Count II aggravated assault. C.P. 28. On May 11, 2005, Williams entered an open plea knowingly, voluntarily, and intelligently before the Honorable Andrew C. Baker, DeSoto County Circuit Court judge. Williams was sentenced to serve twenty years with four suspended on each count, with both sentences running concurrently. T. 35. On May 12, 2008, Williams, represented by counsel, filed a motion for post-conviction relief which was summarily denied by the trial court. C.P. 5-8, 14-19.

### **SUMMARY OF ARGUMENT**

Williams' motion for post-conviction relief is procedurally barred because he failed to file his motion in the trial court within three years of his conviction. Alternatively, Williams' claims are without merit.

Williams' guilty plea was made knowingly, voluntarily, and intelligently. He was advised of the nature of the charges against him and the consequences of entering a guilty plea, as well as the minimum and maximum sentence and the constitutional rights he would forfeit as a result of entering a guilty plea. Williams' specific claims that he was not informed of the elements of the crimes charged, no factual basis existed for the acceptance of his guilty plea, and that he was not informed that he would forfeit his right to a direct appeal are all contradicted by the record. Williams also claims that the trial court did not inform him that sentencing is not a jury function. There is no requirement that the trial court so inform a defendant.

Williams also claims that he received ineffective assistance of counsel. However, he has wholly failed to show deficient performance or prejudice.

## **ARGUMENT**

### **I. WILLIAMS' MOTION FOR POST-CONVICTION RELIEF IS PROCEDURALLY BARRED.**

Williams pleaded guilty and was sentenced on May 11, 2005. His motion for post-conviction relief was not filed until May 12, 2008. A prisoner must file his motion for post-conviction relief within three years of the judgment of conviction. Miss. Code Ann. § 99-39-5(2). Although Williams' motion was filed just outside the three year limit, it should still be deemed procedurally barred in accordance with the statute. Williams does not argue that he meets a statutory exception to the time bar, or even recognize that his claim is time-barred. Further, as Williams is represented by counsel, he does not receive the benefit of the so-called prison mailbox rule. Without abandoning its position that Williams' claims are procedurally barred, the State would also show that his arguments are without merit.

### **II. WILLIAMS' GUILTY PLEA WAS MADE KNOWINGLY, VOLUNTARILY, AND INTELLIGENTLY.**

A trial court's denial of a motion for post-conviction relief will not be reversed absent a finding that the trial court's decision was clearly erroneous. *Noel v. State*, 943 So. 2d 768, 770 (¶5) (Miss. Ct. App. 2006). A guilty plea is valid only if it is entered into "voluntarily, knowingly, and intelligently, with sufficient awareness of the relevant circumstances and likely consequences." *McNeal v. State*, 951 So.2d 615 (¶6) (Miss. Ct. App. 2007). A plea is voluntary when the defendant has been informed of the nature of the charges against him and the consequences of entering a guilty plea. *White v. State*, 921 So.2d 402, 405 (¶9) (Miss. Ct. App. 2006) (citing *Alexander v. State*, 605 So.2d 1170, 1172 (Miss.1992)). The trial court must inform the defendant of the minimum and

maximum prescribed penalties and the constitutional rights forfeited by entering a guilty plea. *Id.* An examination of the plea colloquy shows that Williams was informed of the nature of the charges against him and the consequences of entering a guilty plea, as well as the minimum and maximum sentences and the constitutional rights he would forfeit as a result of entering a guilty plea. As such, his plea was voluntarily and intelligently given.

Relying on *Jones v. State*, 936 So. 2d 993 (Miss. Ct. App. 2006), Williams claims that his guilty plea was involuntary because the trial court did not ensure that Williams understood each of the elements of the crimes to which he pleaded guilty. In *Jones*, the trial court's summary denial of post-conviction relief was reversed based on the appellant's claim that his plea was not knowing, voluntary, and intelligent because he had not been informed of the elements of the offense to which he pleaded guilty. *Id.* at 994 (¶3). However, this honorable Court recently stated that the holding in *Jones* is limited to situations in which the form plea petition is the only proof in the record that the guilty plea petitioner was informed of the nature and element of the charge. *Simoneaux v. State*, No. 2007-CA-01983-COA (¶25) (July 21, 2009 Miss. Ct. App.). In *Simoneaux*, the appellant, like Williams, relied on *Jones* in arguing that his guilty plea was given involuntarily because the trial court did not ensure that he understood the elements of the crime charged. *Id.* This Court found that the trial court's questioning at the plea hearing established that defense counsel had gone over the charges and elements of the crimes charged, distinguishing *Simoneaux* from *Jones*. *Id.* at (¶28). Specifically, the exchange between the trial court judge and Simoneaux at the guilty plea hearing was as follows.

The Court:	Did [your lawyer] go over the indictments with you and the elements of each crime.
Defendant:	Yes, sir.
The Court:	Do you understand the elements of the crimes?
Defendant:	Yes, sir.

*Id.* at (¶29). This Court noted that there is no requirement that the trial court explain the elements of the crime to the defendant. *Id.* Instead, “ the constitutional prerequisites of a valid plea may be satisfied where the record accurately reflects that the nature of the charge and the elements of the crime were explained to the defendant by his own, competent counsel.” *Id.* (quoting *Bradshaw v. Stumpf*, 545 U.S. 175, 183 (2005)).

Although the trial court in the present case did not explain the elements of manslaughter and aggravated assault to Williams or ask Williams if defense counsel explained the elements, nor did defense counsel state on the record that he had explained the elements, proof that Williams was informed of the nature and element of the charge is not limited to the form plea petition. Unlike *Jones*, the prosecutor in the present case gave a very detailed recitation of the facts the State intended to prove if Williams elected to proceed to trial. That recitation laid out all of the elements of the crimes charged. T. 12-13. After the recitation of facts which laid out the elements of manslaughter and aggravated assault, Williams stated on the record that recalled and understood that the facts recited by the State were the basis for his charges. T. 13. Because the statement of facts included the elements of the crimes charged, Williams’ on-the-record recognition is tantamount to an acknowledgment that understood the elements of the crimes charged. Additionally, Williams’ indictment also tracked the language of the culpable negligence manslaughter and aggravated assault statutes, thereby putting Williams on notice of the elements of the crimes charged. The *Jones* court noted that the purpose of the requirement of ensuring that the elements of the crime have been explained to the defendant before accepting his guilty plea is to ensure “an intelligent assessment by the defendant of: (1) whether he has in fact done anything wrong under the law, and (2) the likelihood that he stands to be convicted if he exercise his right to a jury trial.” *Jones*, 936 So. 2d at 997 (¶17) (quoting *Gaskin v. State*, 618 So.2d 103 (Miss. 1993)).



While a form plea petition in which the defendant swears that defense counsel has explained the elements of the crimes charged may not suffice on its own to show that a defendant has been informed of the nature and elements of the crimes charged, such an assertion in combination with an indictment which lays out the elements of the crimes and a recitation of the factual basis at the plea hearing which also lays out the elements of the crimes charged undoubtedly suffice to show that Williams understood the nature and elements of the crimes for which he admitted guilt.

In *Gaskin v. State*, the appellant alleged that his plea was involuntary because the trial court failed to advise him of the elements of the crimes to which he pleaded guilty. 618 So.2d 103 (Miss. 1993). The Mississippi Supreme Court held that the trial court's error in failing to advise a defendant of the elements of the crime charged is harmless "if it can be shown that prior to the court's acceptance of [the defendant's] plea, he had already been advised through other sources of the critical elements of the offenses he was charged with." *Id.* at 107. The *Gaskin* court found that the information adequately advised Gaskin of the elements of the crime charged. *Id.* See also *Carter v. State*, 775 So.2d 91, 98 (¶29) (Miss. 1999) (acknowledging the holding in *Gaskin* that "in some cases, the charging papers may be sufficient to inform the defendant of the elements of the crime with which he is charged."). The State would note that the *Jones* opinion seemed to dismiss *Gaskin* and *Carter* by simply noting that those decisions predate *Stumpf*. However, *Gaskin* and *Carter* are still good law and in no way offend the United States Supreme Court's holding in *Stumpf*. All three cases acknowledge that an explanation of the elements of the crime to which the defendant wishes to plead guilty can be explained to the defendant by a source other than the trial court judge.<sup>1</sup>

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<sup>1</sup>Had the *Gaskin* court had the benefit of the *Stumpf* opinion, the *Gaskin* court would likely have found no error rather than harmless error since *Stumpf* clarified that the United States Supreme Court has "never held that the judge must himself explain the elements of each charge to the defendant on the record." *Stumpf*, 125 U.S. at 153.

Because the record affirmatively shows that Williams was made aware of the elements of manslaughter and aggravated assault prior to entering a plea, his claim that his plea was involuntary must fail.

**III. A FACTUAL BASIS EXISTED FOR THE TRIAL COURT'S ACCEPTANCE OF WILLIAMS' GUILTY PLEA.**

A trial court must ensure that a factual basis exists before the court may accept a guilty plea. URCCC 8.04(A)(3). Reviewing courts must ensure that the record contains facts which are "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)). A factual basis for a guilty plea exists where the State recites facts which constitute the crime charge. *Brown v. State*, 989 So.2d 882, 884 (¶9) (Miss. Ct. App. 2007) (citing *Corley v. State*, 585 So.2d 765, 767 (Miss. 1991)).

Williams' claim that no factual basis existed for the acceptance of his guilty plea is wholly contradicted by the record. As previously stated, the prosecutor gave a detailed account of the facts the State intended to prove if Williams proceeded to trial.

BY MR. COUCH: Yes, sir, Your Honor. The State would show beyond a reasonable doubt with credible and admissible evidence, in Count 1 the Defendant did on or about the 24th day of October of 2003 kill Ashley Nicole Flowers by culpable negligence; and in Count 2, on that same day, did recklessly cause serious bodily injury to Brian Flowers under circumstances manifesting extreme indifference to the value of human life by operating his vehicle, in which Brian Flowers was a passenger, and said conduct resulted in the vehicle leaving the roadway, crashing and causing Brian Flowers to suffer a fractured vertebrae.

The facts would show, Your Honor, that Mr. Williams at the time was 21 years old. He had five minor passengers in his vehicle, the oldest being 17; the youngest being 13, and that was Ashley Nicole Flowers. Around eight o' clock that night

is when this incident occurred, but just prior to that, Mr. Williams had purchased a large amount of alcohol with funds provided to him by some of the minors in the vehicle. Some of those minors were drinking, along with Mr. Williams.

He proceeded to a very hilly area on a road that connects the State of Tennessee with Southaven, Mississippi and was going over this road at a high rate of speed and alternately turning his lights on and off and cresting the hills. The last time he did so, his vehicle overturned, causing the injuries to Brian Flowers and the injuries that led to the death of Ashley Nicole Flowers.

All these events occurred in DeSoto County, therefore within the jurisdiction of this Court.

BY THE COURT: Mr. Williams, you heard the Prosecutor relating to you and for the record what he thinks he could show in a trial of this case before a jury. Do you understand and recall the events that bring you here today?

BY THE DEFENDANT: Yes, sir, Your Honor, I do.

T. 12-13. The record excerpt not only shows that the State provided a detailed factual basis for the plea, but also shows that Williams indicated that he recalled those facts and understood that those facts formed the basis of his manslaughter and aggravated assault charges. Williams claims that he was not given the opportunity to contradict the offer of proof presented by the State. However, Williams stated that he remembered the events that the prosecutor described. One cannot remember something that did not happen. Williams' statement that he remembered the events described by the prosecutor is the functional equivalent of Williams admitting that the facts were true. If Williams disagreed with the State's offer of proof, the time for expressing such was at the guilty plea hearing. Furthermore, Williams agreed that the State's offer of proof was true by entering a valid guilty plea.

#### **IV. THERE IS NO REQUIREMENT THAT THE TRIAL COURT INFORM THE DEFENDANT THAT SENTENCING IS NOT A JURY FUNCTION.**

Williams cites to no case law which states that the trial court must inform a defendant that

the jury does not determine the sentence if he proceeds to trial and is found guilty. The reason for the lack of citation is because there is no such requirement. Williams' failure to cite legal authority renders his third assignment of error procedurally barred from appellate review. *Young v. State*, 919 So.2d 1047, 1049 (¶5) (Miss. Ct. App. 2005).

**V. WILLIAMS WAS ADVISED THAT THE ENTRY OF A GUILTY PLEA WAIVES THE RIGHT TO A DIRECT APPEAL.**

As previously discussed, Williams was informed of the nature of the charges against him and the consequences of entering a guilty plea, as well as the minimum and maximum sentence and the constitutional rights he would forfeit as a result of entering a guilty plea. Williams claims that he was not specifically told that if he proceeded to trial and was convicted that he had the right to file a direct appeal. However, Williams acknowledges that he was told that would not be entitled to appeal his guilty plea. The exact language used by the trial court to advise Williams that he was waiving his right to appeal by entering a guilty plea was, "Also, I want each of you to understand fully that if I accept your offered pleas today, for all practical purposes, you are giving up your right to appeal any action taken here at the Circuit Court level to the State Supreme Court . . . ."

T. 22. The record clearly shows that Williams was fully advised of the constitutional rights he forfeited by entering a valid guilty plea.

**VI. WILLIAMS DID NOT RECEIVE INEFFECTIVE ASSISTANCE OF COUNSEL.**

In his final issue, Williams cites the *Strickland* standard and claims that defense counsel was deficient "in failing to raise the aforementioned issues." As shown, Williams failed to show error in any of his assignments of error. No reversible error occurred in the present case, and Williams has failed to show deficient performance or prejudice.


## CONCLUSION

For the foregoing reasons, the State asks this honorable Court to affirm the trial court's denial of post-conviction relief.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I, La Donna C. Holland, 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 8th day of September, 2009.



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