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## **STATEMENT OF ISSUES**

**ISSUE I: Williams' Motion for Post-Conviction Relief is Not Procedurally Barred by Time.**

**ISSUE II: The Trial Court Erred in Failing to Ensure That Williams Was Advised Of and Understood Each of the Elements of the Crimes He was Pleading Guilty To.**

**ISSUE III: The Trial Court Erred in Failing to Make a Finding on the Record That a Factual Basis Existed for Williams' Guilty Plea.**

## **STATEMENT OF FACTS**

The Appellant/Defendant, Jason Edward Williams, (hereinafter referred to as "Williams"), was indicted by the June 2004 Grand Jury of Desoto County, Mississippi for one count of Manslaughter by Culpable Negligence and one count of Aggravated Assault by Culpable Negligence. (R. 28). These charges were the result of a one-car automobile accident which occurred on October 24, 2003 in which Williams was driving at night without the use of headlights. Although all persons in the vehicle were injured, as a result of said automobile accident, minor passenger Ashley Nicole Flowers was killed, and minor passenger Brian Flowers received a fractured vertebrae.

On May 11, 2005, a plea and sentencing hearing was held in the matter, and Williams submitted petitions to enter plea of guilty to Count One: Manslaughter by Culpable Negligence and Count Two: Aggravated Assault by Culpable Negligence. Judge Baker accepted Williams' open guilty plea (R.E. 25; R. 126, L. 18-29), and sentenced him. During the hearing, the Court: (1) failed to ensure that Williams was advised of and understood each of the elements of the crimes he was pleading guilty to; and (2) failed to make a finding on the record that Williams' plea was voluntarily and intelligently made and that a factual basis existed for Williams' guilty plea. Williams' defense counsel also failed to object to the Court's aforesaid errors or to raise said errors/issues at plea or sentencing.

*A Plea of Guilty and Judgment of the Court* was entered on May 26, 2005. (R.E. 39-40; R.

140-141). On May 12, 2008, Williams filed a *Motion for Post-Conviction Relief* in the Trial Court of Desoto County, Mississippi in Cause No. CV2008-0169. (Supplement to Appellant's R.E. 1-4). The Trial Judge entered an *Order* denying Williams' motion for post conviction relief on February 4, 2009 ( R.E. 42-48), and Williams timely filed his *Notice of Appeal* herein on February 27, 2009.

### **SUMMARY OF THE ARGUMENT**

The Trial Court erred in numerous respects in this cause. As a result of those errors, Williams' plea was not voluntarily, freely and intelligently given, and he was unfairly prejudiced and deprived of his constitutional rights.

### **ARGUMENT**

#### **ISSUE I: Williams' Motion for Post Conviction Relief is Not Procedurally Barred By Time.**

In its brief herein, the State claims that Williams' *Motion for Post Conviction Relief* is procedurally barred by lapse of time. However, this assertion is simply incorrect.

Mississippi Code Annotated (1972) as amended §99-39-5(2) states that a motion for post conviction relief shall be made **within three (3) years after entry of the judgment of conviction.** M.C.A. §99-39-5(2). In this case, Williams pled guilty and was sentenced on May 11, 2005. However, the *Plea of Guilty and Judgment of the Court* was not entered until May 26, 2005. On May 12, 2008, within three (3) years of the date of entry of the judgment, Williams filed a *Motion for Post-Conviction Relief* in the Trial Court of Desoto County, Mississippi. On February 4, 2009, the Trial Judge entered an *Order* denying Williams' motion for post conviction relief. A footnote in the *Order* entered by the Trial Judge denying Williams' motion specifically noted that Williams' *Motion for Post Conviction Relief* was timely filed. (R. 99, R.E. 14).

Mississippi Code Annotated (1972) as amended §99-39-25 states that a final judgment by a trial court as to motions for post conviction relief may be reviewed by the Mississippi Supreme

court on such terms and conditions as are provided for in criminal cases. MCA §99-39-25. Mississippi Rule of Appellate Procedure 4(a) states that a notice of appeal shall be filed within thirty (30) days after the date of entry of the judgment or order appealed from. M.R.A.P. 4(a). Williams filed his *Notice of Appeal* herein on February 27, 2009, well within the thirty (30) day time period. As both the *Motion for Post Conviction Relief* and the *Notice of Appeal* were filed within the applicable time periods, Williams' claim is not time-barred.

**ISSUE II: The Trial Court Erred in Failing to Ensure That Williams Was Advised Of and Understood Each of the Elements of the Crimes He was Pleading Guilty To.**

Where a defendant pleads guilty to a crime without having been informed of the crime's elements, the plea is not voluntarily, freely, and intelligently made, and the plea is invalid. Jones v. State, 936 So.2d. 993, 995 (Miss. App. 2006)(citing Henderson v. Morgan, 426 U.S. 637 (1976)). The Trial Court must ensure that the record accurately reflects that the nature of each charge and its elements were adequately explained to the defendant. Id. (citing Henderson v. Morgan, 426 U.S. 637, 647 (1976)).

In its brief, the State attempts to distinguish the case at bar from this Court's holding in Jones v. State. In support of its position, the State relies on Simoneaux v. State. In Simoneaux, this Court did, indeed, distinguish its facts from those in Jones. In Simoneaux, this Court stated that the Jones holding is limited to situations in which only boilerplate language in a plea petition is used to show that a defendant was advised of and understood the elements of the crimes to which he was pleading guilty. Simoneaux v. State, 2009 WL 2154485 (Miss. App. 2009)(¶ 25). Unlike Jones, Simoneaux involved a case in which the trial court assured, through questioning at the plea hearing, that the charges and elements of each were explained to the defendant by his counsel. The Trial Judge specifically asked the defendant if his lawyer went over the elements of each crime with him and whether he understood the elements of each crime to which he was pleading. The defendant

responded affirmatively. Simoneaux at ¶ 28.

However, the State's reliance on Simoneaux is misplaced. Simoneaux stands for the assertion that where there is boilerplate language in the plea petition regarding the defendant's knowledge of the elements of each crime **in addition to** a record which reflects a specific, sworn-to statement that the defendant understands the nature and elements of the crime(s) to which he is pleading guilty, the record is sufficient for a determination that the plea is valid. In this case, the Trial Court Judge never advised Williams of the elements of the crimes to which he was pleading guilty. In addition, neither Williams or his defense counsel ever affirmed for the Trial Court on the record that Williams had been advised of and understood each of the elements.

The State also now asserts that the its recitation of the facts it intended to show at trial is tantamount to an affirmation by Williams on the record that the nature and elements of the charges against him had been explained to him. The State argues that, after the State's offer of proof, the Trial Judge questioned Williams, and Williams "stated on the record that [he] recalled and understood that the facts recited by the State were the basis for his charges." (See Appellee's Brief, Page 5). However, this is a misstatement of the exchange that occurred at the plea hearing. In fact, after the State's offer of proof, the Trial Judge asked Williams, "Do you understand and recall the events that bring you here today?", to which Williams answered affirmatively. Williams' statement that he recalled the events that brought him to court is hardly tantamount to a statement by Williams that he understood and recalled the facts recited by the State in its offer of proof or a statement that he understood the nature of elements of the charges against him. Williams was also never asked whether he disputed the facts as recited by the State, or if he recalled those facts. As such, the State's assertion that this exchange was evidence of William's understanding of the elements of the charges to which he was pleading guilty or the Trial Judge's satisfaction of his duties in that regard must fail.

Lastly, the State argues that because Williams' indictment tracked the language of the culpable negligence manslaughter and aggravate assault statutes, he was put on notice of the elements of the charges to which he was pleading guilty to. Again, this is not synonymous with a statement by Williams on the record that he understood the elements of the charges. At no point during the plea soliloquy were Williams or his defense counsel asked whether, nor did they affirm that, Williams had reviewed the indictment and/or understood the elements of the charges listed in the indictment. There is simply nothing in the record to indicate that Williams was informed of and understood the elements of the charges against him. Therefore, this argument by the State must also fail.

In this case, the only proof in the record that Williams was informed of the nature and elements of his charges is the form plea petition, exactly as was the case in Jones v. State. As such, it cannot be held that Williams was advised of and understood the elements of the crimes to which he was pleading guilty or that his plea was made voluntarily, knowingly, and intelligently, with a clear understanding of the relevant circumstances and potential circumstances. In fact, Williams was not informed of each of the elements of the crimes he was charged with and pleading guilty to, particularly jurisdiction and venue. Had Williams been so informed, he would not have plead guilty to the charges.

**ISSUE III: The Trial Court Erred in Failing to Make a Finding on the Record That a Factual Basis Existed for Williams' Guilty Plea.**

As was previously stated in Williams' brief in this cause, pursuant to *Rule 8.04(A)(3) of the Uniform Rules of Circuit and County Court Practice*, before a plea is entered, the Trial Court must determine that there is a factual basis for the guilty plea. Nichols v. State, 994 So.2d 236, 237 (Miss. App. 2008). A factual basis is not established when the record does not include the stipulation by the parties of the proof to be offered. Boddie v. State, 875 So.2d 180, 188 (dissenting opinion)

(Miss. 2004). Should a defendant fail or refuse to admit sufficient facts for the Court to determine that the defendant committed the charged crime, the Court must either refuse to accept the guilty plea or fully satisfy the requirements of an Alford plea. Aucoin v. State, 2009 WL 755279, 4 (Miss. App. 2009)(citing Carter v. State, 775 So.2d. 91, 98 (Miss. 1999))

In its brief herein, the State argues that a factual basis did exist for the Trial Court's acceptance of the guilty plea. The State, however, misses the point of Williams' assignment of error. Whether a factual basis exists or not is a determination which **must be made at the plea hearing by the Trial Judge**. Regardless of whether a factual basis was established/existed or not, the Trial Judge failed to make a finding on the record that there was, in fact, a factual basis for Williams' guilty plea or that his plea was voluntarily, knowingly, and intelligently given. This is a clear violation of *U.C.C.R. 8.04* and Nichols v. State.

In any case, it cannot be said that a factual basis was ever established for Williams' plea of guilty. The Trial Judge failed to determine whether the facts, as relayed by the State, were understood or disputed by Williams. As previously discussed, the Trial Judge asked Williams whether he understood and recalled the events that brought him to court, not whether he understood and recalled the events as recited in the State's offer of proof. Again, these are entirely different questions. Williams did not admit to the offer of proof by the State, nor did he at any point admit to any facts which would allow the Trial Judge to conclude that he committed the crimes for which he was entering a plea of guilty. As such, pursuant to Mississippi law, the Trial Judge should have refused to accept Williams' guilty plea or in the alternative, taken his guilty plea in accordance with the requirements of an Alford plea. Neither of these things were done.

Furthermore, because the Trial Judge failed to find that a factual basis existed for acceptance of Williams' guilty plea, he could not logically determine that Williams' plea was made voluntarily,

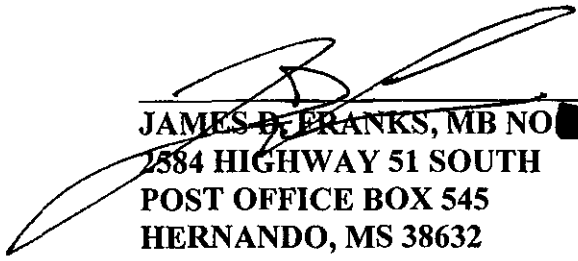


intelligently, and freely.

### **CONCLUSION**

The State's arguments as to the aforesaid matters are flawed. The Trial Court erred in numerous respects at the plea and sentencing hearing in this cause, namely: (1) in failing to ensure that Williams was informed of and understood the nature and elements of the charges against him, and (2) in failing to make a finding that a factual basis existed for acceptance of Williams' guilty plea. As a result, the Defendant's plea was not freely, voluntarily, and intelligently made, and therefore, was unconstitutional. The judgment of the Trial Court should be reversed and Williams' conviction and sentence vacated and this cause should be remanded to the original Trial Court for a new trial on the merits.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I, James D. Franks, do hereby certify that I have this day mailed, via U.S. Mail, postage prepaid, a true and correct copy of the above and foregoing *Reply Brief of Appellant* to the following individuals at their regular mailing addresses:

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