


CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the Court of Appeals may evaluate possible disqualification or recusal:

- | | | |
|----|------------------------------|---|
| 1. | Jason Edward Williams | Appellant/Defendant |
| 2. | Honorable James D. Franks | Appeal Attorney of Record for Appellant/
Defendant |
| 3. | Honorable Jack Jones | Trial Attorney of Record for Appellant/
Defendant |
| 4. | Honorable Charles Hodum | Trial Attorney of Record for Appellant/
Defendant |
| 5. | Honorable Allen B Couch, Jr. | Assistant District Attorney |
| 6. | Honorable John Champion | District Attorney |
| 7. | Honorable Andrew C. Baker | Desoto County Circuit Court Judge |



JAMES D. FRANKS, *Attorney for Appellant/Defendant*

TABLE OF CONTENTS

	<u>Page</u>
CERTIFICATE OF INTERESTED PERSONS.....	2
TABLE OF CONTENTS.....	3
TABLE OF AUTHORITIES.....	4
STATEMENT OF ISSUES.....	5
STATEMENT OF THE CASE.....	6
STATEMENT OF FACTS.....	6
STANDARD OF REVIEW.....	7
SUMMARY OF THE ARGUMENT.....	8
ARGUMENT.....	8
ISSUE I: 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	8
ISSUE II: The Trial Court Erred in Failing to Determine Whether Williams Agreed with the State's Offer of Proof, and in Failing to Make a Finding on the Record that the Plea was Voluntarily and Intelligently Made and Factual Basis Existed for Williams' Guilty Plea.....	9
ISSUE III: The Trial Court Erred in Failing to Advise Williams that the Jury Would Not Sentence Him if He Were Convicted in a Jury Trial	12
ISSUE IV: The Trial Court Erred in Failing to Advise Williams that He was Entitled to Appeal a Jury Conviction, But Only That He Was Not Entitled to Appeal a Plea of Guilty	12
ISSUE V: Williams' Defense Counsel was Ineffective in Failing to Object to the Trial Court's Aforesaid Errors or to Raise said Errors/ Issues at Plea or Sentencing.....	13
CONCLUSION.....	14
CERTIFICATE OF SERVICE.....	15

TABLE OF AUTHORITIES

	<u>Pages</u>
<u>CASES</u>	
<u>Aucoin v. State</u> , 2009 WL 755279 (Miss. App. 2009).....	10
<u>Boddie v. State</u> , 875 So.2d 180 (Miss. 2004).....	8, 10
<u>Bradshaw v. Stumpf</u> , 545 U.S. 175 (2005).....	8, 12, 13
<u>Jones v. State</u> , 936 So.2d. 993 (Miss.App. 2006).....	8, 9
<u>Moss. v. State</u> , 940 So2d 949 (Miss.App. 2006).....	8
<u>Nichols v. State</u> , 994 So.2d 236 (Miss.App. 2008).....	10
<u>Vince v. State</u> , 844 So.2d 510 (Miss.App. 2003).....	13
<u>Wells v. State</u> , 903 So.2d 739, 741 (Miss. 2005).....	13
<u>OTHER AUTHORITY</u>	
Uniform Rule of Circuit and County Court Practice 8.04(A)(3).....	10

STATEMENT OF ISSUES

- ISSUE I:** **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 II:** **The Trial Court Erred in Failing to Determine Whether Williams Agreed with the State's Offer of Proof, and in Failing to Make a Finding on the Record that the Plea was Voluntarily and Intelligently Made and That a Factual Basis Existed for Williams' Guilty Plea.**
- ISSUE III:** **The Trial Court Erred in Failing to Advise Williams that the Jury Would Not Sentence Him if He Were Convicted in a Jury Trial.**
- ISSUE IV:** **The Trial Court Erred in Failing to Advise Williams that He was Entitled to Appeal a Jury Conviction, But Only that He was Not Entitled to Appeal a Plea of Guilty.**
- ISSUE V:** **Williams' Defense Counsel was Ineffective in Failing to Object to the Trial Court's aforesaid Errors or to Raise said Errors/Issues at Plea or Sentencing.**

STATEMENT OF THE CASE

This cause originated in the Circuit Court of Desoto County, Mississippi wherein the Appellant/Defendant entered separate open plea(s) of guilty to Count One: Manslaughter by Culpable Negligence and Count Two: Aggravated Assault by Culpable Negligence before Desoto County Circuit Court Judge, Honorable Andrew C. Baker on May 11, 2005. Honorable Judge Andrew C. Baker accepted the Appellant/Defendant's open guilty plea(s) (R.E. 25; R. 126, L. 18-29), and sentenced him to twenty (20) years in the custody of the Mississippi Department of Corrections, with sixteen (16) years to serve and four (4) years suspended as to Count One (R.E. 36; R.137, L. 10-13), and the same sentence as to Count Two, to run concurrent with the sentence imposed on Count One. (R.E. 36; R. 137, L. 23-26). The Court entered its *Plea of Guilty and Judgment of the Court* on May 19, 2005, which was filed with the Circuit Clerk on May 26, 2005. (R.E. 39; R. 140-141). Appellant/Defendant filed a *Motion for Post-Conviction Relief* on May 12, 2008 (R. 5-8), and later an *Amendment to Motion for Post-Conviction Relief* to correctly identify the document as a *Petition for Post-Conviction Relief*. (R. 11-12). On January 30, 2009, without benefit of a hearing, Judge Baker entered an *Order* denying the Appellant/Defendant's *Petition for Post-Conviction Relief*. (R.E 42-47; R. 14-19). The Appellant/Defendant herein timely appeals the denial of his *Petition for Post-Conviction Relief*, as well as the judgment and sentence of the Desoto County Circuit Court.

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 separate petitions to enter an open 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 to twenty (20) years in the custody of the Mississippi Department of Corrections, with sixteen (16) years to serve and four (4) years suspended as to Count One (R.E. 36; R. 137, L. 10-13), and the same sentence as to Count Two, to run concurrent with the sentence imposed on Count One. (R.E. 36; R. 137, L. 23-26). During the plea and sentencing hearings, 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 determine whether Williams agreed with the State's offer of proof; and
- (3) 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; and
- (4) failed to advise Williams that the jury would not sentence him if he were convicted in a jury trial; and
- (5) failed to advise Williams that he was entitled to appeal a jury conviction, but only that he was not entitled to appeal a plea of guilty.

Williams' defense counsel also failed to object to the Court's aforesaid errors or to raise said errors/issues at plea or sentencing.

STANDARD OF REVIEW

This Court's standard of review of a trial court's denial of post-conviction relief is well-settled. "In reviewing a trial court's decision to deny a petition for post-conviction relief [we] will

not reverse such a denial absent a finding that the trial court's decision was clearly erroneous.” Moss v. State, 940 So.2d 949, 951 (Miss. App. 2006) (citing Kirksey v. State, 728 So.2d 565, 567 (Miss.1999) (citing State v. Tokman, 564 So.2d 1339, 1341 (Miss.1990)). Questions of law are reviewed de novo. Boddie v. State, 875 So.2d 180, 183 (Miss. 2004)(citing Brown v. State, 731 So.2d 595, 598(¶ 6) (Miss.1999).

SUMMARY OF THE ARGUMENT

The Trial Court erred in numerous respects in this cause. Further, Williams' defense counsel was ineffective in their representation of Williams in this matter. As a result of the errors made by the Trial Court and Williams' legal counsel in this cause, the Defendant was unfairly prejudiced and deprived of his constitutional rights. Therefore, the plea and sentence of the Trial Court should be reversed and vacated, and this cause should be remanded to the original Trial Court for a new trial on the merits.

ARGUMENT

ISSUE I: 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.

“A guilty plea operates as a waiver of important rights, and is valid only if done voluntarily, knowingly, and intelligently, ‘with sufficient awareness of the relevant circumstances and likely consequences’”. Bradshaw v. Stumpf, 545 U.S. 175, 183 (2005)(citing Brady v. United States, 397 U.S. 742, 748 (1970)). This standard protects a defendant’s due process right to receive “real notice of the true nature of the charge against him.” Jones v. State, 936 So.2d. 993, 995 (Miss. App. 2006)(citing Bousley v. United States, 523 U.S. 618 (1998)). “Where a defendant pleads guilty to a crime without having been informed of the crime’s elements, this standard is not met and the plea is invalid.” Id. (citing Henderson v. Morgan, 426 U.S. 637 (1976)). Although the Court taking a defendant’s plea is not required to, himself, explain the elements of each crime on the record, it is

that Court's responsibility to ensure a record adequate for ... later review. Id. (citing Boykin v. Alabama, 295 U.S. 238, 244 (1969)). The Court must, at least, ensure that the record accurately reflects that the nature of each charge and its elements were adequately explained to the defendant by his own competent counsel. Id. (citing Henderson v. Morgan, 426 U.S. 637, 647 (1976)).

The Mississippi Court of Appeals has held that even a defendant's written form plea petition indicating that his counsel has explained the elements of each crime he is pleading guilty to followed by an affirmation by the defendant on the record at plea hearing that he, in fact, signed and understood the plea petition will not satisfy the constitutional requirements of a valid guilty plea. Jones at 998.

During the plea hearing in this matter, the Trial Court Judge never advised Williams of each of the elements of the crimes with which he was charged and pleading guilty to, including jurisdiction and venue. Likewise, the Trial Judge did not ensure that Williams understood each of these elements. Furthermore, at no point during Williams' plea hearing did Williams or his defense counsel affirm for the Trial Court on the record that defense counsel had advised Williams of each of the elements and that made sure Williams understood the elements. 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.

Under these circumstances, it cannot be said that Williams' plea was made voluntarily, knowingly, and intelligently, with a clear understanding of the relevant circumstances and potential circumstances. Therefore, Williams' guilty plea should be held invalid .

ISSUE II: The Trial Court Erred in Failing to Determine Whether Williams Agreed with the State's Offer of Proof, and in Failing to Make a Finding on the Record that the Plea was Voluntarily and Intelligently Made and That a Factual Basis Existed for Williams' Guilty Plea.

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). This requirement is “not a mere formality of the plea process, but is required as part of a ‘constitutionally valid and enforceable decision to plead guilty’”. Aucoin v. State, 2009 WL 755279, 4 (Miss. App. 2009)(citing Carter v. State, 775 So.2d. 91, 98 (Miss. 1999)). 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 at 4.

At the plea hearing in this matter, the State made its offer of proof. The following exchange then occurred:

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?

Williams: Yes, sir, Your Honor, I do.

Court: Mr. Jones, Mr. Hodum, have you all conducted your own investigation into this charge?

Mr. Jones: We have, Your Honor.

Court: Are you satisfied that the prosecution could probably get to the jury on Count 1 and Count 2 of this charge?

Mr. Jones: Yes, sir.

(R.E. 15; R. 116; T. 12, L. 13-28).

After the State’s offer of proof, the Trial Court Judge failed to determine whether or not the

Defendant accepted with that offer of proof as factual. Rather, he simply asked him whether he understood and recalled the events which brought him to court that day. These are entirely different questions. Just because Williams recalled the events that brought him to court for plea and sentencing, does not mean that he understood the elements of the charges against him or that he did not disagree with the offer of proof made by the State.

The Trial Judge cannot make a determination that a factual basis exists for Williams' guilty plea unless Williams is given the opportunity to contradict the offer of proof presented by the State. Williams must be offered a chance to agree or disagree with the offer of proof for the Trial Judge to make an informed decision as to the basis for his guilty plea. For example, Williams may disagree with a fact described in the offer of proof which constitutes a crucial element of the crime charged. This issue is particularly relevant in a situation such as Williams' in which he was: (1) not advised of the elements of the crimes to which he was offering a plea of guilty, and (2) not asked whether he agreed with the offer of proof given by the State.

Williams was not asked whether he admitted to the offer of proof by the State, and certainly did not, 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. Likewise, Williams' plea was not taken in accordance with the requirements of an Alford plea. As such, the Trial Judge should have refused to accept his guilty plea.

Furthermore, the Trial Judge failed to make a finding on the record that there was, in fact, any 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 this case, Williams' defense counsel acknowledged to the Court that they believed the State could probably get the case to a jury based upon the State's offer of proof. If an informed and

voluntary plea by defense counsel was the constitutional requirement, the plea might be valid. However, it is the informed and voluntary plea of the Defendant that is required by law. And, in this case, Williams did not make an informed and voluntary plea.

The Trial Judge did not, and, in fact, could not have, made an informed decision on the record as to whether a factual basis existed for Williams' plea of guilty, because he failed to ask Williams whether he agreed or disagreed with the offer of proof. Therefore, the plea was constitutionally flawed, and should be invalidated.

ISSUE III: The Trial Court Erred in Failing to Advise Williams that the Jury Would Not Sentence Him if He Were Convicted in a Jury Trial.

"A guilty plea operates as a waiver of important rights, and is valid only if done voluntarily, knowingly, and intelligently, 'with sufficient awareness of the relevant circumstances and likely consequences'". Bradshaw v. Stumpf, 545 U.S. 175, 183 (2005)(citing Brady v. United States, 397 U.S. 742, 748 (1970)).

Although the Trial Court did advise Williams at the plea hearing that he was giving up his right to a jury trial by pleading guilty (T. 15, L. 25-29), neither the Trial Court Judge nor Williams' defense counsel advised Williams that the jury would not sentence him if he were convicted in a jury trial. Had he been so advised, Williams would not have plead guilty.

Given these circumstances, it cannot be said that Williams' plea was made voluntarily, knowingly, and intelligently "with awareness of relevant circumstances and likely consequences". In fact, Williams did not know the circumstances and consequences of his plea or he would not have plead guilty. As a result, Williams' guilty plea should be deemed invalid and unconstitutional.

ISSUE IV: The Trial Court Erred in Failing to Advise Williams that He was Entitled to Appeal a Jury Conviction, But Only that He was Not Entitled to Appeal a Plea of Guilty.

“A guilty plea operates as a waiver of important rights, and is valid only if done voluntarily, knowingly, and intelligently, ‘with sufficient awareness of the relevant circumstances and likely consequences’”. Bradshaw v. Stumpf, 545 U.S. 175, 183 (2005)(citing Brady v. United States, 397 U.S. 742, 748 (1970)).

Although the Trial Court Judge did advise Williams that he was not entitled to appeal a plea of guilty (T. 22, L. 8-28), neither the Trial Court Judge nor Williams’ defense counsel advised Williams that he would be able to appeal a jury conviction. Had he been so advised, Williams would not have plead guilty.

Again, under these circumstances, Williams’ plea was not made voluntarily, knowingly, and intelligently “with awareness of relevant circumstances and likely consequences”. Had Williams known the circumstances and consequences of his plea, he would not have plead guilty. Therefore, his guilty plea should be held unconstitutional and invalid.

ISSUE V: Williams' Defense Counsel was Ineffective in Failing to Object to the Trial Court's aforesaid Errors or to Raise said Errors/Issues at Plea or Sentencing.

The standard for determining whether a defendant received ineffective assistance of counsel is "whether counsel's conduct so undermined the proper functioning of the adversarial process that the [process] cannot be relied on as having produced a just result." Wells v. State, 903 So.2d 739, 741 (Miss. 2005) (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)). The Defendant must demonstrate that: (1) his counsel's actions were deficient, and (2) that, but for the deficiency, there was a substantial likelihood of a different outcome in the case. Vince v. State, 844 So.2d 510, 514 (Miss.App. 2003)(citing Strickland v. Washington, 466 U.S. at 687 (1984)).

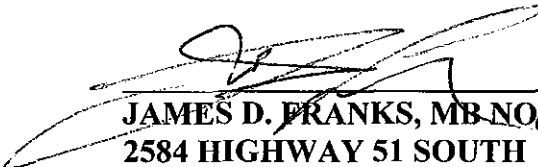
It is clear that the Williams' defense counsel was deficient in failing to raise the aforementioned issues. In addition, there is no question that, had Petitioner's counsel not failed to

do so, the outcome in this matter likely would have been different. Had Williams been adequately informed of the circumstances and potential consequences of the charge against him, his plea of guilty, and the relevant law, as required by the Constitution, he would not have entered a plea of guilty.

CONCLUSION

As previously discussed, the Trial Court erred in numerous respects at the plea and sentencing hearing in this cause. Furthermore, the Trial Court was clearly erroneous and failed to apply the law in denying Williams' petition for post-conviction relief based upon the same issues discussed in this appeal. Lastly, as previously discussed, Williams' defense counsel were ineffective in their representation of Williams in numerous respects in this matter. As a result of the errors made by the Trial Court in the plea and sentence in this cause and Williams' ineffective counsel, the Defendant was unfairly prejudiced and was deprived of his constitutional rights. Therefore, 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 *Brief of Appellant* to the following individuals at their regular mailing addresses:

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