

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

VINCENT B. STRICKLAND

APPELLANT

VS.

NO. 2009-CP-1504-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE CASE

VINCENT STRICKLAND, a thirty-four (34) year old Caucasian male who can both read as well as write (C.P. at 26, 41), appeals from the summary denial of his “Petition for Post-Conviction Collateral Relief” filed in the Circuit Court of Jones County on August 11, 2009, Billy Joe Landrum, Circuit Judge, presiding.

It was true in **Garlotte v. State**, 530 So.2d 693, 694 (Miss. 1988), and it is equally true here, that “[t]his case presents an excellent example of the appropriate use of the summary disposition provision of § 99-39-11(2), Miss.Code Ann. 1972 (Supp.1987).”

It was also true in **Garlotte**, and again it is equally true here, that “[t]he trial judge was eminently correct in his disposition of this case on the merits without a hearing.” 530 So.2d at 694. After a thorough review of the pleadings and prior proceedings in the case, Judge Landrum found as a fact and concluded as a matter of law that Strickland’s claims were manifestly or plainly without merit.

Judge Landrum's findings of fact were neither clearly erroneous nor manifestly wrong.

STATEMENT OF FACTS

Vincent Strickland was charged with possession of methamphetamine and cocaine.

On June 7, 2007, Strickland, in the presence of his lawyer, Michael Mitchell, signed a document styled "Waiver of Indictment" whereby Strickland agreed in paragraphs 1. and 3. to ". . . waive open court prosecution and consent[ed] that the proceeding may be had by information filed by the District Attorney instead of by a Grand Jury." (C.P. at 21-22)

On July 30, 2007, a criminal information was filed in the Circuit Court of Jones County charging Vincent Strickland with two counts of possession of controlled substances. (C.P. at 19)

Count I charged Strickland with possession on November 19, 2006, with 5.37 grams of methamphetamine in violation of Miss.Code Ann. §97-17-33 while count II charged Strickland with possession on November 27, 2006, with 1.14 grams of meth and .51 grams of cocaine. (C.P. at 19-20)

Strickland had signed a petition to enter plea of guilty on June 7, 2007, whereby he freely and voluntarily acknowledged, *inter alia*, he was aware of his right to "a speedy and public trial by jury," he was aware of the minimum and maximum punishments for the offenses charged, he was satisfied with the advice and help he had received from his lawyer, his plea was freely and voluntarily offered, and he was indeed guilty of the offenses charged. (C.P. at 23-28) The petition was filed on July 30, 2007. (C.P. at 23)

A plea-qualification hearing was conducted on July 31, 2007, during which Strickland, after being advised of his right to a trial by jury as well as other valuable rights, agreed to waive those rights and freely and voluntarily admitted his guilt of the crimes charged.

By virtue of the prosecutor's recommendation which the circuit judge accepted (C.P. at 39-

40), Strickland got a real meal deal in sentencing. He could avoid incarceration altogether if he met certain conditions.

In count I Strickland was sentenced “ . . . to serve a sixteen (16) year sentence with the [MDOC], with said years to be suspended upon the condition of successful completion of twelve (12) months on house arrest and three (3) years on post-release supervision and successful completion of the Circuit Court Community Service Program.” (C.P. at 29)

In count II Strickland was sentenced “ . . . to serve an eight (8) year sentence with the [MDOC], with said years to be suspended upon the condition of successful completion of twelve (12) months on house arrest and three (3) years on post-release supervision and successful completion of the Circuit Court Community Service Program.” (C.P. at 29)

According to the sentencing order Strickland entered his plea of “guilty” in violation of Miss.Code Ann. §41-29-139 and “[t]he sentences in each count of this cause are to run concurrent.” (C.P. at 29)

Apparently, at some point in time thereafter Strickland violated the provisions of his house arrest and was returned to jail. On August 11, 2009, he filed a petition for post-conviction collateral relief alleging, *inter alia*, his plea was involuntary, his sentence improper, and his lawyer ineffective. Strickland also claimed a misrecital with respect to the identity of the statute actually violated was fatal to the integrity of his plea(s).

Strickland argued he was entitled to vacation of his guilty pleas as well as his sentence and requested an evidentiary hearing. (C.P. at 12)

On July 31, 2007, Strickland entered a plea of guilty to a criminal information charging him in count I with possession of 5.37 grams of methamphetamine and, in count II, possession of cocaine

in the amount of .51 grams and methamphetamine in the amount of 1.14 grams. (C.P. at 20-21, 39-40)

Although the information referred to an incorrect code section, the information ended with the words, "All against the peace and dignity of the State of Mississippi." (C.P. at 20)

Strickland had signed a document styled "Waiver of Indictment" on June 7, 2007, in which he expressly "... waiv[ed] open court prosecution and consent[ed] that the proceeding may be had by information filed by the District Attorney instead of by a Grand Jury." (C.P. at 21)

Strickland's information consisting of two individual counts and filed on July 30, 2007, although correctly defining, in the statutory language, the crime of possession of certain controlled substances, misrecited the section number of the statute defining the crime of possession. Instead of §41-29-139, the indictment recited "§97-17-33" which defines the offense of burglary.

Stated differently, the indictment was 100% correct in "words" describing the nature of the offense but incorrect in "figures" reciting the *number* of the code section describing the offense.

As mentioned previously, a Petition to Enter Plea of Guilty was signed and sworn by Strickland on June 7, 2007, and filed on July 30, 2007. (C.P. at 23-27) Strickland was correctly advised of the minimum and maximum penalties for the crimes charged. (C.P. at 24)

Strickland, under the trustworthiness of the official oath, admitted in paragraph 14 he was satisfied with the advice and help his lawyer had given him and confessed his guilt in paragraph 15. (C.P. at 25)

On August 13, 2009, Judge Landrum entered a three (3) page order summarily denying post-conviction relief. (C.P. at 35-37; appellee's exhibit A, attached)

A transcript of the guilty plea proceedings is found in the record at C.P. 38-46. *See also*

appellee's exhibit B, attached.

The relief requested by Strickland on appeal to this Court is immediate vacation of his plea(s) as well as his sentence. (Brief for Appellant at 15)

SUMMARY OF THE ARGUMENT

The Court of Appeals will not disturb a trial court's dismissal of a motion for post-conviction relief unless it was clearly erroneous. **Mayhan v. State**, No. 2007-CP-01078-COA decided June 6, 2009 (¶6), slip opinion at 3 citing **Williams v. State**, 872 So.2d 711, 712 (¶2) (Ct.App.Miss. 2004). *See also* **Buckhalter v. State**, 912 So.2d 159, 160 (¶1) (Ct.App.Miss. 2005)[“When reviewing a lower court's decision to deny a petition for post-conviction relief, [this Court] will not disturb the trial court's factual findings unless they are found to be clearly erroneous.”]

Judge Landrum's findings of fact with respect to the voluntariness of Strickland's plea(s), the effectiveness of Strickland's lawyer, and the integrity of Strickland's waiver of indictment were not clearly erroneous.

While it is true that issues of law are reviewed *de novo*, there are no legal issues in this case that have been erroneously decided.

Despite the misrecital in the indictment Judge Landrum found as a fact that Strickland's plea was entered freely, voluntarily and intelligently and that Strickland was not entitled to an evidentiary hearing.

It is well settled that so long as the charge is otherwise proper, a misrecital of a statutory section is mere surplusage and any amendment thereto would be one of form as opposed to substance. **Westmoreland v. State**, 246 So.2d 487, 492-93 (Miss. 1971) [Indictment for false pretense not defective because of mis-recital of statutory section dealing with the use of a promissory

note or other negotiable evidence of debt.] *See also Leavitt v. State*, 982 So.2d 981, 989 (Ct.App.Miss. 2008) [“Reference to an incorrect code section within an indictment will not cause the indictment to be defective so long as the language of the indictment serves to put the defendant on notice of the charges against him.”]

We see no meaningful distinction in this regard between a misrecital in a criminal indictment and a misrecital in a criminal information.

Strickland was properly and repeatedly advised of the charges to which he was pleading guilty. The petition to enter plea of guilty (C.P. at 23-27), the waiver of indictment (C.P. at 21-22) and the transcript of the plea-qualification hearing (C.P. at 38-45), make this perfectly clear. Strickland was well aware of the charges and expressly agreed with his lawyer “. . . there is a legal and factual basis for the Court’s acceptance of this plea.” (C.P. 41)

The fact-finding by the circuit judge is supported by both substantial and credible evidence.

Strickland’s claims are totally contradicted by the record. (C.P. at 23-27, 38-45) Judge Landrum was entitled to rely heavily on the statements made by Strickland under the trustworthiness of the official oath. *Taylor v. State*, 682 So.2d 359, 364 (Miss. 1996); *Sherrod v. State*, 784 So.2d 256, 260 (Ct.App.Miss. 2001).

Put another way, Strickland’s claims were manifestly without merit. *Williams v. Puckett*, 624 So.2d 496 (Miss. 1993).

ARGUMENT

THE TRIAL JUDGE DID NOT ABUSE HIS JUDICIAL DISCRETION IN SUMMARILY DENYING POST-CONVICTION RELIEF.

It is elementary “[t]he burden is upon [Strickland] to prove by a preponderance of the

evidence that he is entitled to the requested post-conviction relief.” **Bilbo v. State**, 881 So.2d 966, 968 (¶3) (Ct. App.Miss. 2004) citing Miss.Code Ann. §99-39-23(7) (Rev.2000).

We respectfully submit the trial judge did not abuse his judicial discretion in finding that Vincent Strickland has failed to do so here.

Judge Landrum denied post-conviction relief in a three (3) order containing findings of fact and conclusions of law. (C.P. at 35-37; appellee’s exhibit A, attached)

We respectfully submit the circuit judge was correct in summarily denying Strickland’s claims because they were manifestly without merit. Judge Landrum’s reliance upon **Buckhalter v. State**, 912 So.2d 160 (Ct.App.Miss. 2005), was right on target.

Issue 1. Misrecital of Statute.

Strickland is correct in his observation that Miss.Code Ann. §97-17-33 is a burglary statute. Thus, there is a misrecital in the criminal information. The misrecital was not addressed directly, only implicitly, in Judge Landrum’s order denying post-conviction relief.

No matter.

In **Leavitt v. State**, *supra*, 982 So.2d 981, 989 (Ct.App.Miss. 2008), we find the following language controlling the posture of Strickland’s complaint:

While Leavitt is correct that sections 97-3-95(a) and 97-3-95© do not exist, his claim still must fail. Reference to an incorrect code section within an indictment will not cause the indictment to be defective so long as the language of the indictment serves to put the defendant on notice of the charges against him. *Culp v. State*, 933 So.2d 264, 277 (¶40) (Miss. 2005). The verbiage of the indictment closely tracks the specific language of section 97-3-95(1)(a) and 97-3-95(1)©, with alteration only for the specifics of the crime charged. Any error resulting from exclusion of the numerical marker of the specific statute charged was harmless. Therefore, Leavitt’s counsel was not deficient in failing to challenge the indictment on this

ground.

See also **Westmoreland v. State**, *supra*, 246 So.2d 487, 492-93 (Miss. 1971), where the Supreme Court addressed this matter in some detail. The court adopted the general rule that

“ . . . a misrecital of the statute does not avoid [sic] the indictment where the facts stated constitute an offense under any statute, especially where the objection is raised after plea of guilty. The misrecital may be rejected as surplusage, at least where the conclusion is generally as ‘contrary to the statute in such case made and provided.’ ”

The information filed in the case at bar simply concluded with the words, “All against the peace and dignity of the State of Mississippi.” (C.P. at 20)

Nevertheless, the specific offenses charged were accurately conveyed to Strickland via the waiver of indictment sworn to and signed by Strickland on June 7, 2007 (C.P. at 21-22) , a second time in the petition to enter plea of guilty sworn and signed by Strickland on June 7, 2007 (C.P. at 23-27) , a third time in the criminal information filed on July 30, 2007 (C.P. at 19-20), and a fourth time during the plea-qualification hearing held on July 31, 2007, at which time the prosecutor meticulously explained in plain and ordinary English the charges to which Strickland was pleading guilty and the factual basis therefor. (C.P. at 39-41) The prosecutor even identified by name the two analysts who conducted the tests on the substances unlawfully possessed. (C.P. at 41)

The following colloquy then took place:

MR. MITCHELL: Your Honor, on behalf of Vincent Brian Strickland, we would admit there is a legal and factual basis for the Court’s acceptance of this plea. Is that correct, Vincent?

THE DEFENDANT: Yes, sir. (C.P. at 41)

There can be no doubt Strickland was fully aware of the nature of the charge at the time of his guilty plea(s). Strickland has failed to prove by a preponderance of the evidence he is entitled to any relief on this claim.

Issue 2. Involuntary Plea(s).

It is enough to say that many of Strickland's claims are materially contradicted by Strickland's own acknowledgments and statements made, under the trustworthiness of the official oath, both in Strickland's petition to enter his plea of guilty (C.P. at 23-27) and during the plea-qualification hearing itself. (C.P. at 38-45)

Not every motion for post-conviction relief filed in the trial court must be afforded a full adversarial hearing. **Jones v. State**, 795 So.2d 589 (Miss. 2001). Where, as here, the trial judge can determine that a factual assertion by the movant is either immaterial or belied by unimpeachable evidence in the transcript or record of the case leading to the plea of guilty, no hearing is required and the judge may summarily dismiss the motion. **Knight v. State**, 796 So.2d 262 (Ct.App.Miss. 2001).

When a defendant's allegations in a motion for post-conviction relief, submitted to the trial judge under the trustworthiness of the official oath, totally contradict the sworn testimony before the trial judge at the time of the guilty pleas, there is no need for an evidentiary hearing to further explore the matter. **Taylor v. State**, *supra*, 682 So.2d 359, 364 (Miss. 1996).

Stated somewhat differently, when a defendant's claims on a motion to withdraw guilty plea are in contradiction with the guilty plea record, the trial judge, as Judge Landrum apparently did here, is entitled to rely heavily on statements made under oath. **Sherrod v. State**, *supra*, 784 So.2d 256 (Ct.App.Miss. 2001).

Although a defendant is entitled to change his mind, solemn declarations made in open court under the trustworthiness of the official oath carry a strong presumption of verity. **Baker v. State**, 358 So.2d 401, 403 (Miss. 1978); **Richardson v. State**, 769 So.2d 230, 235-36 (¶14) (Ct.App.Miss. 2000). That presumption has not been overcome here.

Issue 3. Ineffective Assistance of Counsel.

During the plea-qualification hearing, the following colloquy transpired:

THE COURT: Are you satisfied with your lawyer's advice and representation?

THE DEFENDANT: Yes, sir. (C.P. at 43)

Strickland, also under the trustworthiness of the official oath, informed Judge Landrum in Strickland's petition to enter plea of guilty of the following: "[I] believe that my lawyer has done all that anyone could do to counsel and assist me. I AM SATISFIED WITH THE ADVICE AND HELP HE HAS GIVEN ME; . . ." (C.P. at 25) Strickland's assertion of adequacy and satisfaction, which appears in bold print and is adorned in capital letters, has got to stand for something.

In the recent decision of **Elliott v. State**, No. 2008-CA-00948-COA decided November 3, 2009, (¶23) slip opinion at 12, we find the following language apropos to Strickland's complaint:

Elliott's testimony at the plea hearing contradicts his contentions. He stated under oath that he had met with, conferred, and discussed his case thoroughly with his attorney. Elliott affirmed that he was 'totally satisfied' with his counsel's legal representation. Moreover, Elliott has not presented any specific evidence that, but for his counsel's alleged deficiencies, he would not have pleaded guilty. Instead, he supports his contentions of deficient counsel with mere assertions in the form of his own affidavit. Elliott has failed to show how such alleged deficiencies would have made him go to trial.

Same here.

The certificate of counsel signed by Mr. Mitchell states, *inter alia*, that Mr. Mitchell “ . . . read and fully explained to the defendant the allegations contained in the indictment in this case.” (C.P. at 27) This certificate was signed by Mitchell in the presence of the defendant and only after a full discussion of its contents. It has got to stand for something.

Counsel was not constitutionally ineffective for failing to challenge the information on the grounds it referred to an incorrect code section. This defect was one of form as opposed to substance and was amendable. *See Leavitt v. State, supra*, 982 So.2d 981, 988-89 (Ct.App.Miss. 2008), which rejected a similar claim.

Nor was counsel ineffective for allowing Strickland to waive indictment and plea guilty to charges filed in a criminal information. Strickland, who was fully advised of the nature of the charges, his right to a trial by jury, and also presentation to a grand jury, has demonstrated no prejudice, not one whit. Strickland was advised he was entitled to a speedy and public trial by jury, and he freely and voluntarily waived that right. (C.P. at 23-24, 43-44)

Issue 4. Waiver of Indictment.

Strickland was repeatedly advised of his right to a jury trial. The waiver of indictment, signed by Strickland under the trustworthiness of the official oath, speaks for itself. Strickland understood the nature of the crimes charged and knowingly and voluntarily waived open court prosecution with the understanding that the State could proceed by information filed by the district attorney *instead of by a Grand Jury*. [emphasis ours]

Paragraph 4. of the information specifically stated that with the “ . . . filing of the waiver, the Defendant, VINCENT BRYAN STRICKLAND, waives none of his rights other than *a presentment to a Grand Jury*. ” [emphasis ours]

See Hill v. State, 919 So.2d 142 (Ct.App.Miss. 2005) [Defendant knowingly and voluntarily waived indictment with an awareness of his right to a grand jury investigation and questioned the defendant with respect to any mental or emotional problems that would prevent him from knowing what was happening.]

Similarly, Judge Landrum questioned Strickland with respect to whether he was under the influence of alcohol or drugs. Strickland answered affirmatively when asked if his plea was freely, voluntarily, and intelligently given and specifically answered “no sir” when asked if he wanted to change his plea. (C.P. at 44-45)

As noted in **Buckhalter v. State**, *supra*, 912 So.2d at 161, “[a] valid guilty plea admits all elements of a formal criminal charge and operates as a waiver of all non-jurisdictional defects contained in an indictment against a defendant.” This would include the misrecital of the code section. We respectfully submit the same holds true with respect to a criminal information.

Strickland claims he waived indictment without being fully advised by counsel as to the consequences it would cause to his defense. (Brief for Appellant at 4) By pleading guilty, Strickland waived any yet to be identified defenses he may have had to the charges. **Taylor v. State**, 766 So.2d 830, 835 (Ct.App.Miss. 2000) citing **Anderson v. State**, 577 So.2d 390, 391 (Miss. 1991) [“Because Taylor pled guilty, he waived any defenses he might have had to the charges.”]

Issue 5. Strickland’s Sentence.

In his appellate brief Strickland appears to assail his sentence. (Brief for Appellant at 12-14) Because this claim was not specifically assigned and argued in his motion for post-conviction relief, Strickland is barred from raising it on appeal. *See Ewing v. State*, No. 2008-CP-00123-COA decided September 29, 2009, (¶18) slip opinion at 7 [“Ewing’s failure to raise the issue of the

voluntariness of his guilty plea before the trial court in his motion for post-conviction relief bars this issue from our review.”]

In addition to this, Strickland is precluded by statute from assailing his sentence because he entered a plea of guilty.

Miss.Code Ann. §99-35-101, effective from and after July 1, 2008, reads, in its entirety, as follows:

Any person convicted of an offense in a circuit court may appeal to the Supreme Court. However, where the defendant enters a plea of guilty and is sentenced, then no appeal from the circuit court to the Supreme Court shall be allowed.

“A defendant who pleads guilty waives his right to an appeal.” **Parkman v. State**, 953 So.2d 315, 320 (Ct.App.Miss. 2007). The amended statute reaffirms what this office has proclaimed all along; the prohibition includes a defendant’s sentence.

Miss.Code Ann. § 99-39-11 (2) reads, in its pertinent parts, as follows:

* * * * *

(2) *If it plainly appears* from the face of the motion, any annexed exhibits and the prior proceedings in the case that the movant is not entitled to any relief, *the judge may make an order* for its dismissal and *cause the prisoner to be notified*.

* * * * *

It did, he did, and he was. **Falconer v. State**, 832 So.2d 622 (Ct.App.Miss. 2002 .

CONCLUSION

In this case, both the district attorney and the trial judge bent over backwards when they

allowed Strickland to avoid any incarceration by abiding by certain conditions imposed while under house arrest. Strickland apparently failed to do so. (Brief for Appellant a 1-2)

Summary denial was proper because Strickland's post-conviction claims targeting the voluntariness of his plea and the effectiveness of his lawyer were manifestly without merit. The circuit judge properly denied relief without the benefit of an evidentiary hearing. *Cf. Davidson v. State*, 477 So.2d 944 (Miss. 1985) ["The circuit court may dismiss a petition for writ of habeas corpus summarily, without an evidentiary hearing, if an examination of the petitioner's papers reveals that the claims are manifestly without merit."]

Appellee respectfully submits this case is devoid of any claims worthy of an evidentiary hearing or vacation of the guilty plea(s) voluntarily entered by Strickland or the sentence imposed in its wake. Accordingly, the judgment entered in the lower court summarily denying Strickland's motion for post-conviction relief should be forthwith affirmed.

Respectfully submitted,

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IN THE CIRCUIT COURT OF JONES COUNTY, MISSISSIPPI
SECOND JUDICIAL DISTRICT

VINCENT BRYAN STRICKLAND

PETITIONER

VERSUS

CIVIL ACTION NO. 2009-68-CV8

STATE OF MISSISSIPPI

RESPONDENT

ORDER DENYING MOTION FOR POST-CONVICTION RELIEF

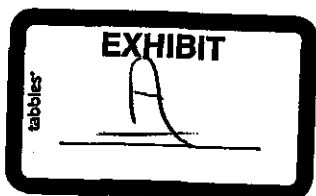
VINCENT BRYAN STRICKLAND seeks relief from conviction in Jones County Circuit Court, Second Judicial District, Cause No. 2007-137-KR2, and the Court, having fully reviewed the Motion and Exhibits attached thereto, and the Court file named hereinabove, the transcript of the hearing on the Plea Petition, and being fully and maturely advised in the premises does find and adjudicate as follows, to-wit:

JURISDICTION

The Movant timely filed for Post Conviction Collateral Relief on the 10th day of August, 2009, being within three (3) years of the entry of his guilty plea on the 31st day of July, 2007, to the indictment against him in Cause No. 2007-137-KR2, being charges of Count I Possession of Methamphetamine and Count II Possession of Methamphetamine and Possession of Cocaine. Therefore, the Court has full and complete jurisdiction over the Motion for Post-Conviction Relief under §99-39-11, Mississippi Code of 1972, annotated.

ALLEGATION OF ERROR

Movant requests post conviction relief based on the fact that his guilty plea was made involuntarily, that the Waiver of Indictment and Criminal Information filed in this cause were void and that his counsel was ineffective.



FINDINGS

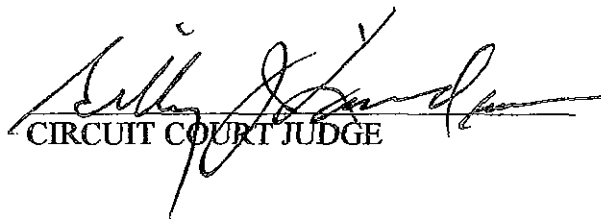
The merits of Strickland's Petition entitle him to no relief and no hearing on his Petition. In particular, he raises no argument, theory, alleged error or other rationale showing that he is entitled to relief. Movant argues that his plea was unintelligent and not voluntarily made and that his counsel was ineffective; therefore, he claims that he is entitled to an evidentiary hearing on these matters. The Court finds this argument without merit. *Buckhalter v. State*, 2005 WL 1532005, 2 (Miss. 2005), reiterated the holding of many cases that "[t]he law is well settled in Mississippi jurisprudence that '[a] valid guilty plea admits all elements of a formal criminal charge and operates as a waiver of all non-jurisdictional defects contained in an indictment against a defendant.'" The question presented by Strickland is whether or not his guilty plea was valid as required by *Buckhalter*. A thorough review of the transcript of the hearing where Strickland's guilty plea was accepted by this Court indicates that his plea was entered freely, voluntarily and intelligently. According to *Buckhalter*, "[t]o establish an ineffective assistance of counsel claim, [a defendant] must show (1) a deficiency in counsel's performance that is (2) sufficient to constitute prejudice to his defense." A review of the plea hearing shows that Strickland was asked questions about the adequacy of his counsel by Judge Landrum and that he did not voice any objection to the representation he received. The record is clear that his plea was entered freely, voluntarily and intelligently. (See plea hearing transcript attached hereto as Exhibit "A").

As to Movant's contention that the Waiver of Indictment and Criminal Information are void, the Court finds no merit to this claim, as evidenced by the plea transcript and Movant's signature on the Waiver.

IT IS, THEREFORE, ORDERED that the Petition for Post-Conviction Relief filed herein by Vincent Bryan Strickland is dismissed (1) for lack of any showing that the Movant is entitled to any relief whatsoever and (2) that Movant is not entitled to an evidentiary hearing, and as such, that request is denied.

The Clerk of the Court is ordered to mail a copy of this Order to the Movant at his last mailing address shown of record. All costs herein are assessed to Jones County.

SO ORDERED AND ADJUDGED this 13th day of August, 2009.


CIRCUIT COURT JUDGE

IN THE CIRCUIT COURT OF JONES COUNTY, MISSISSIPPI
SECOND JUDICIAL DISTRICT

STATE OF MISSISSIPPI

VERSUS

NO. 2007-137-KR2

VINCENT BRIAN STRICKLAND

THE FOLLOWING IS A TRUE AND CORRECT TRANSCRIPT OF
THE PLEA HEARING HELD IN THE ABOVE STYLED AND
NUMBERED CAUSE BEFORE THE HONORABLE BILLY JOE
LANDRUM, CIRCUIT JUDGE FOR THE EIGHTEENTH CIRCUIT
COURT DISTRICT OF THE STATE OF MISSISSIPPI, ON THE
31ST DAY OF JULY, 2007.

APPEARANCES:

ON BEHALF OF THE STATE:

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ON BEHALF OF THE DEFENDANT:

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Public Defenders Office
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ELIZABETH BARLOW, CSR - OFFICIAL COURT REPORTER
MIN 165 376

1 (THE DEFENDANT WAS PLACE UNDER OATH
2 BY THE CLERK)

3 MR. PARRISH: Your Honor, this next
4 individual is Vincent Brian Strickland.
5 He is being proceeded with by a criminal
6 information with is filed with the Court
7 and duly executed in 2007-137-KR2. It has
8 two counts.

9 Count I, Mr. Strickland is charged
10 with possession of methamphetamine, 5.37
11 grams. In Count II, also a charge of
12 possession of cocaine, .51 grams. I'm
13 advised that he wishes to withdraw his
14 former plea of not guilty and enter a plea
15 of guilty to those charges laid in those
16 criminal informations.

17 Upon acceptance of his plea, the
18 State would recommend that in Count I he
19 be sentenced to serve a term of 16 years
20 with the Mississippi Department of
21 Corrections. 12 of those will be
22 suspended conditioned upon his successful
23 completion of 12 months house arrest and
24 three years of post-release supervision
25 and this Court's Community Service

1 Program.

2 In Count II the recommendation would
3 be eight years with the Mississippi
4 Department of Corrections with four
5 suspended upon the condition of successful
6 completion of 12 months on house arrest
7 and three on post-release supervision and
8 this Court's Community Service Program.

9 If this matter were to go to trial,
10 Your Honor, we would present evidence that
11 on the 19th day of November, as a result
12 of the information received by agents of
13 the Jones County Sheriff's Department, a
14 search was conducted of the residence of
15 Mr. Strickland where the drugs that are
16 identified in the indictment were found
17 along with -- there in his vehicle. Also,
18 we'd present evidence from the Jones
19 County Sheriff's Department, Darren
20 McCrary and others in the narcotics
21 division, that on the date laid in the
22 indictment that as a result of a contact
23 with Mr. Strickland on that date that they
24 were able to locate in his possession
25 again the drugs that are indicated in that

1 count of that indictment.

2 In the first count, Brandy Goodman of
3 the State Crime Lab, and in the second
4 count, Jamie Johnson of the Mississippi
5 State Crime Lab would testify that the
6 drugs in question are what they were
7 alleged to be in that criminal
8 information.

9 MR. MITCHELL: Your Honor, on behalf
10 of Vincent Brian Strickland, we would
11 admit there is a legal and factual basis
12 for the Court's acceptance of this plea.
13 Is that correct, Vincent?

14 THE DEFENDANT: Yes, sir.

15 MR. MITCHELL: How old are you,
16 Vincent?

17 THE DEFENDANT: 34.

18 MR. MITCHELL: How far did you go in
19 school?

20 THE DEFENDANT: 11th grade.

21 MR. MITCHELL: Can you read and
22 write?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: All right. You were here
25 before the Court or at some time in the

1 past you plead not guilty to these
2 offenses. It's my understanding you want
3 to change your pleas now to the pleas of
4 guilty; is that right?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: You've been advised by
7 your attorney that you are involved in
8 this plea agreement and that you're bound
9 by this plea agreement?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: I need to ask you some
12 questions to make sure you understand your
13 rights. As I ask you these questions, you
14 have your attorney standing at your side
15 where you can consult with him before you
16 give your answers if you feel like you
17 need to do that. The reason I need to ask
18 you these questions is to make sure you
19 enter your pleas freely, voluntarily and
20 intelligently. That's the only way I can
21 accept your plea of guilty is to make sure
22 and make a determination that you do enter
23 your pleas freely, voluntarily and
24 intelligently after I've advised you as
25 what your rights are.

1 Has anybody threatened you or
2 promised you in any way to get you to
3 plead guilty this morning?

4 THE DEFENDANT: No, sir.

5 THE COURT: Are you satisfied with
6 your lawyers advice and representation?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: You know that you have a
9 right to a trial by jury if you want to be
10 tried by a jury? But before you could be
11 found guilty, the district attorney would
12 have to have bring forth all their
13 evidence. You'd be able to review any
14 evidence, ask any questions of the witness
15 about that evidence. You'd also have a
16 right to take the stand on your own
17 behalf. However, if you did take the
18 stand you'd be subject to
19 cross-examination by the State's attorney.
20 You have a right to have an instruction by
21 the Court given to the jury that you have
22 a right to remain silent and you don't
23 have to prove anything. It's up to the
24 State of Mississippi to prove you guilty
25 beyond a reasonable doubt.

1 When you plead guilty you waive these
2 rights. Do you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: If you were found guilty
5 the Court would appoint you an attorney so
6 you could appeal your case to the State
7 Supreme Court for their determination as
8 to whether or not you entered your plea
9 freely, voluntarily and intelligently.
10 When you plead guilty, you waive those
11 rights also. Do you understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: In other words, there
14 won't be any appeal if you plead guilty.
15 You agree to serve this time or to do what
16 you are required to do under this
17 agreement. Do you understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Have you had any
20 alcoholic beverages or drugs to consume
21 within the last 48 hours?

22 THE DEFENDANT: No, sir.

23 THE COURT: Do you feel like you've
24 enter your plea freely, voluntarily and
25 intelligently?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you want to change
3 your plea?

4 THE DEFENDANT: No, sir.

5 THE COURT: The Court finds you've
6 entered your pleas freely, voluntarily and
7 intelligently. The Court accepts your
8 pleas of guilty and finds you are guilty
9 of these offenses. The Court will sign an
10 Order to that effect in compliance with
11 your agreement that you've entered into
12 with the State of Mississippi. Good luck
13 to you.

14 (HEARING CONCLUDED)

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1 COUNTY OF JONES

2 STATE OF MISSISSIPPI

3
4
5 C E R T I F I C A T E

6
7 I, Elizabeth Barlow, Official Court
8 Reporter for the Eighteenth Circuit Court District
9 of the State of Mississippi, do hereby certify that
10 I have reported the proceedings had and done in the
11 foregoing styled cause to the best of my skill and
12 ability and that the above pages contain a true,
13 full and correct transcript of my stenographic notes
14 taken in said proceedings.

15 This the 13th day of August, 2009.

16
17 

18 ELIZABETH BARLOW, CSR #1008
19 Official Court Reporter
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24
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CERTIFICATE OF SERVICE

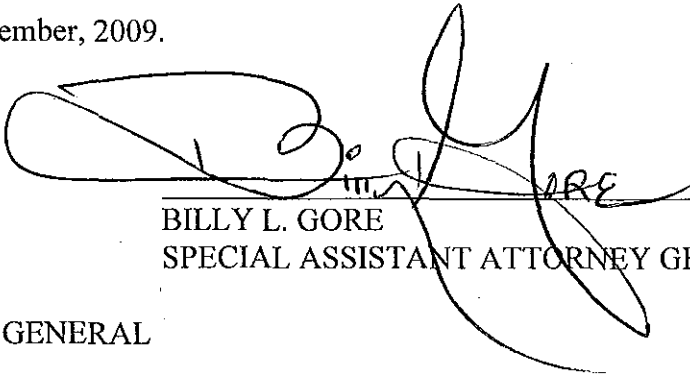
I, Billy L. Gore, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

Honorable Billy Joe Landrum
Circuit Court Judge, District 18
Post Office Box 685
Laurel, MS 39441

Honorable Anthony J. Buckley
District Attorney, District 18
Post Office Box 313
Laurel, MS 39441

Vincent B. Strickland, #131427
SMCI
Post Office Box 1419
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This the 11th day of December, 2009.



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