

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

AMY DANIELLE WILKERSON

APPELLANT

VS.

NO. 2010-CA-1102-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

JIM HOOD, ATTORNEY GENERAL

**BY: LISA L. BLOUNT
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**

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF THE CASE	1
STATEMENT OF THE FACTS	1
SUMMARY OF THE ARGUMENT	2
ARGUMENT	2
PROPOSITION I:	
WILKERSON KNOWINGLY AND VOLUNTARILY ENTERED A GUILTY PLEA TO DEPRAVED HEART MURDER.	2
PROPOSITION II:	
WILKERSON RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL ..	4
CONCLUSION	7
CERTIFICATE OF SERVICE	8

TABLE OF AUTHORITIES

STATE CASES

Baker v. State, 358 So.2d 401, 403 (Miss.1978)	2
Brown v. State, 731 So.2d 595, 598 (Miss. 1999)	2
Cole v. State, 918 So.2d 890, 894 (Miss. Ct. App. 2006)	5
Ford v. State, 708 so.2d 73 (Miss.1998)	5
Grayer v. State, 823 So.2d 592 (Miss.App.2002)	5
Kinney v. State, 737 So.2d 1038, 1041 (Miss.Ct.App.1999)	5
Liddell v. State, 7 So.3d 217, 219 (¶ 6) (Miss.2009)	4
Mason v. State, 42 So.3d 629 (Miss. App., 2010)	2
McQuarter v. State, 574 So.2d 685, 687 (Miss.1990)	5
Roland v. State, 666 So.2d 747, 750 (Miss.1995)	4
Smith v. State, 636 So.2d 1220, 1225 (Miss.1994)	4, 5
Smith v. State, 806 So2d 1148, 1150 (Miss.Ct.App.2002)	2

STATE STATUTES

Mississippi Code Annotated section 97-3-19(2)(F)	1
Mississippi Code Annotated section 97-3-21	3

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

AMY DANIELLE WILKERSON

APPELLANT

VS.

NO. 2010-CA-1102-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

STATEMENT OF THE CASE

This appeal proceeds from the Circuit Court of Jackson County, Mississippi and the summary denial of a motion for post conviction relief filed by Amy Danielle Wilkerson. Aggrieved Wilkerson appealed raising the following issues:

1. Whether the guilty plea of Wilkerson was given knowingly and voluntarily.
2. Whether the performance of Wilkerson's trial counsel was ineffective.

STATEMENT OF THE FACTS

A Jackson County grand jury indicted Amy Danielle Wilkerson ("Wilkerson") for one count of Capital Murder under Mississippi Code Annotated section 97-3-19(2)(F). (CP 2). On March 24, 2007, Wilkerson pled guilty to a reduced charge of Depraved Heart Murder.(CP 4-7; 13). The trial court, Honorable Dale Harkey, presiding, sentenced Wilkerson to life imprisonment in the custody of the Mississippi Department of Corrections. (CP 15-18).

On May 24, 2010, Wilkerson filed a Motion for Post Conviction Relief in the Circuit Court of Jackson County. (CP 20-22). By order dated June 21, 2010, Circuit Judge Kathy Jackson

summarily denied Wilkerson's motion. (CP 43-45).

SUMMARY OF THE ARGUMENT

The order of the Circuit Court of Jackson County dismissing Wilkerson's motion for post-conviction relief should be affirmed. Wilkerson's argument that her plea was not knowing and voluntary is without merit and is rebutted by the fact that Wilkerson stated under oath in her petition to enter a guilty plea and during her plea colloquy that her plea was freely and voluntarily entered and that she fully understood the consequences of pleading guilty.

Wilkerson's trial counsel was not deficient in his performance. Wilkerson totally failed to meet her burden of proof that she received ineffective assistance of counsel.

ARGUMENT

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

PROPOSITION I: WILKERSON KNOWINGLY AND VOLUNTARILY ENTERED A GUILTY PLEA TO DEPRAVED HEART MURDER.

Wilkerson's contention that her plea of guilty was not knowing and voluntary is not supported by the record. A guilty plea is binding only if it is entered voluntarily and intelligently. *Mason v. State*, 42 So.3d 629 (Miss. App., 2010) (citing *Alexander v. State*, 605 So.2d 1170, 1172 (Miss.1992)) (citing *Myers v. State*, 583 So.2d 174, 177 (Miss.1991)). If the defendant is advised regarding the nature of the charge and the consequences of the plea, it is considered "voluntary and intelligent." *Id.* "Solemn declarations in open court carry a strong presumption of verity." *Baker v.*

State, 358 So.2d 401, 403 (Miss.1978).

Wilkerson argues that the record is totally silent as to any explanation given to her about the possible minimum and maximum sentence she could receive if she plead guilty. (Appellant's brief at 5). The State submits the trial judge advised Wilkerson of the minimum and maximum sentence possible when he explained that life in the penitentiary was the only punishment for depraved heart murder and that she was looking at some 34 years in the penitentiary at a minimum. (Tr. 7). It should also be noted that in Wilkerson's Petition to Plead Guilty she acknowledges that she knew and understood that the minimum and maximum sentence for the charge of murder was life. (CP 15-17).

Wilkerson also contends that there was absolutely no mitigation testimony proffered on her behalf. The State submits there was no need for mitigating testimony at her plea hearing. Wilkerson plead guilty to depraved heart murder and pursuant to Mississippi Code Annotated section 97-3-21 the trial judge had no discretion in his sentencing. Therefore, mitigating evidence was not necessary and would not have effected the sentence Wilkerson received.

Wilkerson contends that she had 30 minutes to make a decision to plead guilty. (Appellant's brief at 5). However, in her affidavit attached to her Motion for Post Conviction, Wilkerson tells of her defense counsel coming to the jail around May 20, four days prior to her plea, to advise her to plead to a reduced charge of murder and not risk a possible death sentence if convicted of capital murder. (CP 10).

In considering whether a guilty plea was voluntarily entered, it must be shown that: the defendant's plea was not induced by fear, violence, deception, or improper inducements; the fact that the plea was voluntarily and intelligently made must appear in the record; the defendant was competent to understand the nature of the charge; the defendant understood the nature and

consequences of the plea as well as the maximum and minimum penalties provided by law; the defendant understood that by pleading guilty he waived his constitutional rights to trial by a jury, to confront and cross-examine adverse witnesses, and to avoid self-incrimination; and if the defendant is not represented by an attorney and he is indigent, he has the right to be appointed an attorney to represent him at every stage of the proceeding. *Hicks v. State*, 40 So.3d 640 (Miss. App., 2010) citing URCCC 8.04.

In *Roland v. State*, 666 So.2d 747, 750 (Miss.1995), the court held that when the trial court questions the defendant and explains his rights and the effects and consequences of the plea on the record, the plea is rendered voluntary despite advice given to the defendant by his attorney. See *Smith v. State*, 636 So.2d 1220, 1225 (Miss.1994). Wilkerson's claim must fail in light of the fact that Wilkerson stated under oath that she understood that she would be sentenced to life imprisonment and would have to serve at minimum some 34 years in the penitentiary and understood the consequences of pleading guilty but still wished to plead guilty. The transcript of the plea hearing shows Wilkerson testified under oath in open court that she committed the acts recited by the prosecutor and was therefore guilty as charged. (Tr. 12-15). Wilkerson was fully advised by the trial judge of the nature of the charge, the effect of the plea on her rights, and the possible sentence. Wilkerson responded affirmatively when asked by the trial judge if she understood the rights she was waiving and her possible sentence. There is no evidence in the record to indicate that Wilkerson's plea was invalid.

PROPOSITION II: WILKERSON RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL.

The record does not support Wilkerson's claim that she received ineffective assistance of counsel. To prove ineffective assistance of counsel, the defendant must show: (1) counsel's performance was deficient, and (2) this deficiency prejudiced the defense. *Liddell v. State*, 7 So.3d

217, 219 (¶ 6) (Miss.2009) (quoting *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)). The *Strickland* test applies in the context of guilty pleas as well: if the defendant pleads guilty on the advice of his counsel, the defendant must prove that counsel committed “unprofessional errors of substantial gravity,” and without these errors he would not have pleaded guilty. *Cole v. State*, 918 So.2d 890, 894 (¶ 10) (Miss. Ct. App. 2006) (citing *Reynolds v. State*, 521 So.2d 914, 918 (Miss.1988)). The burden of proof rests with the defendant to show both prongs of *Strickland*. *McQuarter v. State*, 574 So.2d 685, 687 (Miss.1990). The defendant must allege facts pointing toward counsel's deficient performance with “specificity and detail.” *Kinney v. State*, 737 So.2d 1038, 1041 (¶ 8) (Miss.Ct.App.1999) (citing *Cole v. State*, 666 So.2d 767, 777 (Miss.1995)).

Wilkerson claims her attorney failed to do any pre-hearing preparation or interview any witnesses; however, during the plea hearing, defense counsel related to the Court that he hired an expert to review the case. (Tr. 14). Wilkerson also claimed “There was also a total lack of any affirmative matter in Amy’s behalf prepared by counsel, either for reduction of the charge, or for mitigation.” (Appellant’s brief at 7). The State submits the record reflects otherwise. The charge against Wilkerson was reduced from capital murder to depraved heart murder. (Tr. 6; CP 13). She went from facing a possible death sentence or life without parole to facing life with the possibility of parole.

In *Smith v. State*, 636 So.2d 1220 (Miss. 1994), the Mississippi Supreme Court held that when the transcript from court proceedings and the petition for post-conviction relief contradict one another, “the latter is practically rendered a “sham”, thus allowing the summary dismissal of the petition to stand.” In *Ford v. State*, 708 so.2d 73 (Miss.1998), the court held that a post conviction motion “cannot be supported when the record clearly belies every allegation Petitioner makes in his Post-Conviction Relief Motion.” In *Grayer v. State*, 823 So.2d 592 (Miss.App.2002), it was held that,

“This lack of evidence would not be fatally prejudicial to his claim, but for the fact that the record of the guilty plea hearing in this case directly contradicts his claims.”

Wilkerson’s ineffective assistance of counsel claim is contradicted by the record. Wilkerson’s statement in her Motion for Post-Conviction Collateral Relief totally contradicts her testimony under oath when she entered her guilty plea and signed the sworn petition. These contradictions show Wilkerson’s present claim to be a sham. A review of Wilkerson’s Petition to Enter Plea of Guilty and the colloquy between Judge Harkey and Wilkerson show Wilkerson stated under oath that she understood the charge; she knew the minimum and maximum sentences for murder; she fully understood the nature and consequences of pleading guilty; and she understood all of her constitutional rights and further understood that she would be waiving or giving up those rights by pleading guilty (Tr. 7-15). Additionally, Wilkerson advised the court during the plea that she was satisfied with the advice and assistance provided by her lawyer and also acknowledged such in her plea petition. (Tr. 8; CP 4-6).

Wilkerson failed to meet the burden of proof required to establish a prima facie showing that her counsel’s performance was deficient. There is no indication in the record before this Court, other than the allegations made by Wilkerson in her brief, that her counsel’s performance was ineffective. Having failed to show a deficient performance, this issue is without merit

CONCLUSION

Based upon the arguments presented herein as supported by the record on appeal, the State would ask this reviewing court to affirm the order of the Circuit Court of Jackson County denying Amy Wilkerson's motion for post-conviction relief.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

BY: Lisa L. Blount
LISA L. BLOUNT
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, Lisa L. Blount, 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 Kathy King Jackson
Circuit Court Judge
Post Office Box 998
Pascagoula, MS 39568-1959

Honorable Anthony Lawrence
District Attorney
Post Office Box 1756
Pascagoula, MS 39568-1756

George S. Shaddock, Esquire
Post Office Box 80
Pascagoula, MS 39568-0080

This the 9th day of February, 2011.



LISA L. BLOUNT
SPECIAL ASSISTANT ATTORNEY GENERAL

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