



IN THE COURT OF APPEALS FOR THE STATE OF MISSISSIPPI

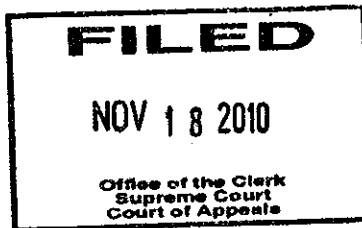
NO. 2010-CA-O1102-COA

AMY DANIELLE WILKERSON

APPELLANT

VERSUS

STATE OF MISSISSIPPI



APPELLEE

**Appeal from the Circuit Court of
Jackson County, Mississippi
Civil Action No. 2010-0012(2)**

BRIEF OF APPELLANT

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IN THE COURT OF APPEALS FOR THE STATE OF MISSISSIPPI

NO. 2010-CA-01102-COA

AMY DANIELLE WILKERSON

APPELLANT

VERSUS

STATE OF MISSISSIPPI

APPELLEE

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 the Judges of the Court of Appeals may evaluate possible disqualification or recusal.

CIRCUIT JUDGE PRESIDING

The Honorable Dale Harkey
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Post Office Box 998
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GEORGE S. SHADDOCK

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STATEMENT OF THE ISSUES

1. Whether the Guilty Plea of Amy Danielle Wilkerson was given knowingly and voluntarily.
2. Whether the performance of Amy's trial counsel was ineffective.

STATEMENT OF THE CASE

PROCEDURAL HISTORY AND DISPOSITION IN THE COURT BELOW

This case stemmed from an alleged "Shaken Baby" charge against Amy Danielle Wilkerson ("Amy") that occurred when she was baby sitting Tristen Michael Chinn, an infant male child, on July 18, 2005 in Jackson County. Tristen died from this alleged abuse, and the Jackson County Grand Jury of Jackson County returned its Indictment (CP-2) on or about March 1, 2006, charging Amy with Capital Murder under **Miss. Code 1972, Sec. 97-3-19(2)(F) (Amend, 2004)**.

Waiving her Arraignment, Amy plead Not Guilty on or about May 10, 2006, (CP-3), and after furnishing her counsel with the names of witnesses and other information, Amy then awaited a trial. Seeing her counsel only briefly over the next few months, and being informed of numerous continuances of her trial date, until mid-March, 2007, there was no substantive discovery and/or consultations between counsel and Amy.

In mid-March, 2007, there began a flurry of conversations concerning Amy's charge, and the possibilities she faced at trial. After being advised by counsel that a "deal" had been structured to save her life if she plead guilty to murder, Amy reluctantly accepted the alleged bargain. At the urging of counsel, Amy executed a Petition to Plead

Guilty (CP-4) on the day of her hearing.

The March 24, 2007 hearing, and after a cursory colloquy on her plea, accepted by the Circuit Court, the Court then rendered its Sentence (CP-14) of life imprisonment with eligibility for parole at age 65, based upon its Order of March 24th (CP-13), amending Amy's Indictment to Depraved Heart Murder.

After independent investigation and subsequent counsel retention, Amy then filed her Motion for Post-Conviction Relief (CP-20), on or about March 24, 2010, under **Miss. Code 1972, Sec. 99-39-7 (Amend 2009)**. After its summary denial by the trial court, Amy then perfected her appeal to this Court.

FACTUAL STATEMENT OF THE CASE

At the time of her plea, Amy was a 31 year old, married woman, and mother to two children, ages 9 and 5. A former customer service and teller with Bank Corp South she began baby sitting to allow her more time with her family. It was in this capacity Amy was baby sitting Tristen Chinn on July 18, 2005, when the child died. In this, Amy's first collision with the criminal justice system, it became a nightmare for her and her family, for which they petition this Court for relief.

The record in this case is very brief. One of the disturbing features of the record is its absence of any meaningful discovery and/or motions by the defense in a capital murder charge against the accused. The transcript of the March 24, 2007 hearing in this case is devoid of any meaningful testimony about possible defenses for Amy, only her brief answers to the presiding Circuit Judge's questions. What is notable is the allegedly agreed amendment to the Indictment (CP-13) without the proper attestation of the State

and the Defendant. This indicates a “cafeteria type” of justice.

Having been incarcerated since her arrest in July, 2005, Amy Danielle Wilkerson now petitions this Court for a full and complete record in her case.

SUMMARY OF THE ARGUMENT

The argument challenging the travesty that was the plea hearing of Amy Danielle Wilkerson is very simple, she received inadequate representation by her counsel that resulted in an involuntary guilty plea. The literal total absence of any type of preparation on their part is shown by the pitiful record in this case.

Considering the gravity of the consequences to Amy, and the original charge against her, this is inexcusable she contends. She will request this Court’s of her plea and remand for purposes of an evidentiary hearing of her Motion for Post-Conviction Relief.

ARGUMENT AND CITATION OF AUTHORITIES

1. Whether the Guilty Plea of Amy Danielle Wilkerson was given knowingly and voluntarily.

On the face of things, it would appear that Amy did in fact give a voluntary plea of Guilty to depraved heart murder. The colloquy was precise and textbook, and all points were covered but one. The one missing was Amy's own version of the alleged shaking of Tristen. At that point, Amy's lead counsel opted out to the testimony of the District Attorney. (T-13 to 15) And, it did sound horrible. Amy's only words were "Yes Sir" to the presiding Judge's question, "Did you shake the baby?". (T-15)

The only variance from the script was, after the Mother of Tristen made her statement, the presiding Judge's comments at the close of the hearing, (T-19), showed just how scripted this shame of a hearing was. It was emphasized by Amy's lead counsel's desire to get out of the court room as quickly as possible (T-19) apparently without regard for his client's needs at that time. This does not pass the decency factor.

Amy's plea was basically a very frightened young lady doing what she was told to do to end this for everyone else, but her.

STANDARD OF REVIEW

It is well established in Mississippi jurisprudence that a guilty plea is voluntary if the defendant understands the charge related to him, what effect the plea will have, and what his possible sentence might be because of the plea. *Wilson v. State*, 577 So.2d 394 (Miss. 1991); U.S.C., Const. Amend. 6. Further, if the defendant is properly advised

of his plea, his plea is considered both intelligent and voluntary. *Alexander v. State*, 605 So.2d 1170 (Miss. 1992); Accord *Smith v. State*, 636 So.2d 1220 (Miss. 1994); **URCCCrим., Rule 3.03(2)**.

LEGAL PRINCIPLES

With the above standards in mind, it would appear that Amy has a slim to none chance on this issue. With the knowledge that both the presiding Judge and her lead counsel possessed vast experience in pleas, both as former prosecutors, and now as a Circuit Judge and criminal defense attorney, neither one would miss a step in a plea. But, contrary to the conventional wisdom on this matter, there is reason to dispute her plea Amy asserts.

Initially, the record is totally silent as to any explanation given to Amy about the possible minimums and maximums in her plea. *Wilson v. State*, 577 So.2d 394 (Miss. 1991); **U.S.C. Const.Amends. 5 6**. There was absolutely no mitigation testimony proffered in Amy's behalf. Finally, from the abbreviated record, Amy had approximately 30 minutes to make a decision affecting the next 34 years of her life. That is a but much to ask of an individual in her first criminal charge, and, at best 2 to 3 hours of her counsel's time for that preceding 2 year period.

Amy's plea was not given knowingly or voluntarily, it was the result of the cafeteria workers moving the line along. *United States v. Patterson*, 739 F.2d 191 (5th Cir., Miss. 1984)

2. Whether the performance of Amy's trial counsel was ineffective.

Was Amy's a case of take the Ten Grand (\$10,000.00) and run? (CP-8, Paragraph 3). On the face of it, this appears so. Again here, we are constrained by the scant record in this case, and Amy would refer to her Affidavit and the supporting Affidavit of Anita Deason (CP-12) as to a narrative of Amy's journey to her plea.

It is from this the 2 to 3 hours of counsels' time is estimated. Equally, the total absence of any pre-hearing preparation on the part of defense counsels is apparent. Though allegations were made of discovery by the defense (T-14), none of this was produced. No possible witnesses were interview by counsel. And, again, no possible mitigation was even proffered by defense counsel. Considering this case started out as a capital murder defense, a great deal is missing from the retained counsel.

STANDARD OF REVIEW

Mississippi has long subscribed to the "two-prong" test of *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052 (1984), as its standard when reviewing the effectiveness of counsel. These prongs are (1) an evaluation of the counsel's actual performance; and, (2) the prejudice to the accused if deficiency in performance is found. This was recently examined in our State in *Thomas v. State*, 10 So.3d 514 (Miss.App. 2008) and *Thompson v. State*, 10 So.3d 525 (Miss.App. 2009), where the strong, but rebuttable presumption of effectiveness within a wide range of performance of professional assistance is established. In this respect, Amy asserts the lack of any semblance of advocacy in her behalf doomed any defense she might have had.

LEGAL PRINCIPLES

Amy asserts here that when it was apparent her counsel had caved in to the State's theory in her case, (T-12 and 14) as inexperienced as she was, it proved no preparation on their part, and no hope to her. To be sure, she was in the dark about this as nothing had been produced, much less explained to her about the State's evidence and case. In essence, she had been left "twisting in wind" for two years in the Jackson County ADC prior to March 24, 2007.

The known lack of witness contact is critical here. *Neely v. Cabana*, 764 F.2d 1173 (5th Cir., Miss. 1984) This is core stuff to any defense foundation. There was not even evidence of any review by counsel with client of possible alternatives as called for in *Thomas*, Ante, pg. 517. 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. *Doss v. State*, 882 So.2d 176 (Miss. 2004), other citations omitted; **U.S.C., Const.Amend. 6.**

Perhaps the greatest deficiency in Amy's case, particularly considering the gravity of consequences to her, was there was no record whatsoever for the presiding Circuit Judge to review. *Middlebrook v. State*, 964 So.2d 638 (Miss.App. 2007) The judicial "silence of the lambs" resulted in the slaughter of her, and should be addressed by this Court.

CONCLUSION

In all candor, this has been an exceedingly difficult appeal to prepare. It has been such due to the total lack of affirmative defense on the part of Amy Danielle Wilkerson's defense counsel. Whatever the strategy defense counsel employed, it was extremely prejudicial to her and resulted in an involuntary guilty plea. She therefore submits in this Brief proper reasons and authorities have been presented to result in this Court's reversal of her guilty plea and sentence, and remand to the Circuit Court of Jackson County for a full evidentiary hearing.

Respectfully submitted,

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Appellant

By:


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CERTIFICATE OF SERVICE

I, George S. Shaddock, Attorney of Record for the Appellant, Amy Danielle Wilkerson, do hereby certify that I have this day delivered the original and four (4) true and correct copies of the above and foregoing Brief of Appellant to the Honorable Kathy Gillis, Clerk of the Supreme Court and Court of Appeals of the State of Mississippi at Jackson, Mississippi.

I further certify that I have delivered a true and correct copy thereof, by United States mail, postage prepaid, to the following listed individuals:

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CERTIFIED this, the 18th day of November, 2010.


GEROGE S. SHADDOCK