

**IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI**

**CHRISTOPHER THOMAS**

**APPELLANT**

**VS.**

**NO. 2010-CP-0054**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR THE APPELLEE**

**APPELLEE DOES NOT REQUEST ORAL ARGUMENT**

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## TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	iv
STATEMENT OF THE CASE .....	1
STATEMENT OF FACTS .....	3
SUMMARY OF THE ARGUMENT .....	4
ARGUMENT .....	5
Issue I. DEFENDANT'S PLEA WAS VOLUNTARY. ANY CONTENTIONS TO THE CONTRARY ARE CLARIFIED IN THE TRANSCRIPT. ....	5
Issue II. DEFENDANT HAD CONSTITUTIONALLY EFFECTIVE ASSISTANCE OF COUNSEL. ....	6
Issue III. DEFENDANT NOT ENTITLED TO AN EVIDENTIARY HEARING. ....	8
CONCLUSION .....	9
CERTIFICATE OF SERVICE .....	10

## **TABLE OF AUTHORITIES**

### **FEDERAL CASES**

<b>Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) .....</b>	<b>6</b>
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### **STATE CASES**

<b>Brooks v. State, 573 So.2d 1350, 1354 (Miss.1990) .....</b>	<b>7</b>
<b>Cook v. State, 990 So.2d 788, 791 (Miss.App. 2008) .....</b>	<b>5</b>
<b>Hamilton v. State, 2010 WL 3749187 (Miss.App. 2010) .....</b>	<b>8</b>
<b>Leatherwood v. State, 473 So.2d 964, 969 (Miss.1985) .....</b>	<b>6</b>
<b>Vielee v. State, 653 So.2d 920, 922 (Miss.1995) .....</b>	<b>7</b>

### **STATE STATUTES**

<b>Miss. Code Ann. § 99-39-11(2) .....</b>	<b>8</b>
<b>Miss. Code Ann. §§ 41-29-138(a) .....</b>	<b>1</b>

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**STATEMENT OF THE CASE**

The grand jury of Panola County indicted defendant for the crimes of Possession and Sale of a Controlled Substance in violation of *Miss. Code Ann.* §§ 41-29-138(a) & 41-29-139(c)(1)(B). (Indictment c.p.49). Defendant petitioned the court to plead guilty, wherein he acknowledged the potential sentence of eight years. (C.p.18). (Transcript c.p. 22-35). Because he was going to be given ‘drug court’ his case was transferred to Judge Ann Lamar. Defendant was told, repeatedly, of the terms of conditions of his non-adjudication and the requirements of the program. He was also told of the consequences should he not fulfill those obligations. If he did

not complete the program he would be sentenced to eight years. (C.p. 78-83)

Within a year defendant failed the program and he was revoked. (Transcript, c.p. 92-140). The court sentenced defendant to the agreed term of eight years.

Subsequently, defendant filed an original action for post-conviction relief. (Motion for Post Conviction Collateral Relief, c.p. 7-4). The motion raised two issues: 1) involuntary plea, and 2) ineffective assistance of counsel. The motion was dismissed with findings of fact and conclusions of law. (Order dismissing, c.p.36-38).

This instant appeal of that dismissal was timely noticed. (C.p.39).

## **STATEMENT OF FACTS**

Defendant was given every opportunity to make amends and get clean. However, for whatever reasons, he will now be incarcerated for about two more years based on his guilty plea.

## **SUMMARY OF THE ARGUMENT**

### **I.**

**Defendant's plea was voluntary. Any contentions to the contrary are clarified in the transcript.**

The record and transcripts of the three hearings in this matter contradict the claims in the post-conviction petition.

### **Issue II.**

**Defendant had Constitutionally effective assistance of Counsel.**

Defendant's counsel got him a real good deal and defendant admitted on the record he was not threatened or coerced and was satisfied with the service of his counsel.

### **Issue III.**

**Defendant not entitled to an evidentiary hearing.**

There was nothing in the petition for post-conviction relief that necessitated an evidentiary hearing. The record belied any claim made in the petition.

## **ARGUMENT**

### **ISSUE I.**

**DEFENDANT'S PLEA WAS VOLUNTARY. ANY CONTENTIONS TO THE CONTRARY ARE CLARIFIED IN THE TRANSCRIPT.**

As the trial court so succinctly noted in the order dismissing the petition...:

A thorough review of the court files, including the transcript of the plea and sentencing hearing, reveals that it is undeniably clear that Thomas' sworn statements contained in his PCR motion are "overwhelmingly belied by unimpeachable documentary evidence in the record," causing this Court to therefore conclude that Thomas' sworn statements are "a sham" and that no evidentiary hearing is required.

Order dismissing petition , c.p. 38.

Such a finding by the trial court, as supported by the transcript, where defendant stated he was not coerced, or threatened is sufficient to dismiss the petition without an evidentiary hearing. *Cook v. State*, 990 So.2d 788, 791 (Miss.App. 2008).

Nothing has been presented on this appeal that overcomes the presumption of correctness with which the rulings of the trial court are imbued.

No relief should be granted on this initial allegation of trial court error.



**ISSUE II.**  
**DEFENDANT HAD CONSTITUTIONALLY EFFECTIVE ASSISTANCE**  
**OF COUNSEL.**

In this allegation of error, which was addressed and dismissed by the trial court, defendant claims he had ineffective assistance of counsel and that he didn't want to attend drug court.

As the trial court noted, even a cursory glance at the record shows otherwise... defendant really wanted to get into the drug court program and get on with his life. (C.p. 79-81). Also, at his revocation hearing defendant himself, under oath stated he used cocaine. (C.p . 133).

¶ 11. Bliss claims his attorney rendered ineffective assistance of counsel because he led Bliss to believe that he would be placed in the drug court program. In order to succeed on this claim, Bliss must demonstrate "that his trial counsel's performance was deficient and the deficient performance prejudiced his defense." *Davis v. State*, 973 So.2d 1040, 1043(¶ 4) (Miss.Ct.App.2008) (citing *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)). We start with the "presumption that counsel's conduct is within the wide range of reasonable conduct" and "that decisions made are strategic." *Leatherwood v. State*, 473 So.2d 964, 969 (Miss.1985). "If the attorney believes that it is in his client's best interest to plead guilty, it is his duty to inform him of that fact." *Robinson*, 964 So.2d at 612(¶ 8).

¶ 12. There is no merit to this issue. During his guilty plea hearing, Bliss swore that his lawyer had not promised him anything to get him to plead guilty. Bliss also swore that he was satisfied with the services of his attorney. "It is firmly established that mere allegations are insufficient to entitle a defendant to an evidentiary hearing on a post-conviction claim of ineffective assistance of counsel." *Ealey v. State*, 967 So.2d 685, 691(¶ 18) (Miss.Ct.App.2007) (citations omitted). Additionally,

Bliss only submitted his own affidavit in support of his allegation. “Post-conviction claims of ineffective assistance are properly dismissed where the defendant offers only his affidavit in support of his allegations.” *Id.* (citing *Vielee v. State*, 653 So.2d 920, 922 (Miss.1995); *Brooks v. State*, 573 So.2d 1350, 1354 (Miss.1990)).

*Bliss v. State*, 2 So.3d 777, 780 (Miss.App. 2009).

In this case now on review, it is clear defendant wanted to get in the drug court... it was only after he got involved in the program and found he couldn't meet the criteria of curfews, testing, and meetings that he suddenly claimed he didn't want to be in the program. Well, he's not in the program and just as was explained to him by his attorney and the trial judges, he ended up in prison.

Defendant was fortunate to have an attorney that managed to get one charge dismissed, non-adjudication on the other charge, entry into a drug-court program. The only ineffective behavior was on the part of defendant.

No relief should be granted on this allegation of error.

**ISSUE III.**  
**DEFENDANT NOT ENTITLED TO AN EVIDENTIARY HEARING.**

In this last allegation of error defendant claims he should have been granted an evidentiary hearing.

For example defendant keeps asserting that he would get three years, but every transcript, and petition (and defendant was present) shows that he could expect a sentence of eight years.

Nothing presented in the petition for post-conviction collateral relief indicates otherwise.

¶ 21. On appeal, Hamilton urges that his PCR motion should be remanded to the circuit court for an evidentiary hearing. But to be entitled to an evidentiary hearing, “a petitioner must demonstrate, by affidavit or otherwise, that there are unresolved issues of fact that, if concluded favorably to the petitioner, would warrant relief.” *McCuiston v. State*, 758 So.2d 1082, 1085(¶ 9) (Miss.Ct.App.2000). This may not be accomplished through Hamilton's own unsupported allegations. *Id.* We find no abuse of discretion in the circuit court's dismissal of Hamilton's PCR motion without an evidentiary hearing.

*Hamilton v. State*, 2010 WL 3749187 (Miss.App. 2010)(decided Sept. 28, 2010).

There were not question of fact or lied that required an evidentiary hearing. The trial court was correct in dismissing the petition under the Miss. Code Ann. § 99-39-11(2).

No relief should be granted based on this allegation of error.

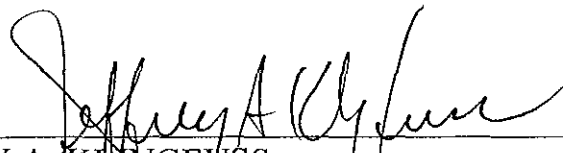
## CONCLUSION

Based upon the arguments presented herein as supported by the record on appeal the State would ask this reviewing court to affirm the trial court dismissal of post-conviction relief.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

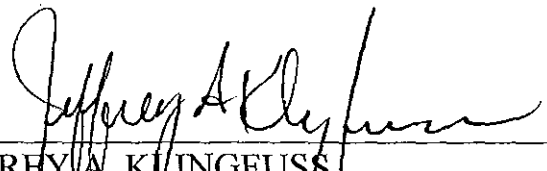
I, Jeffrey A. Klingfuss, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

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This the 4th day of October, 2010.

  
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