

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

JESSIE BEAL

APPELLANT

VS.

NO. 2010-CP-0164-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

JIM HOOD, ATTORNEY GENERAL

**BY: JEFFREY A. KLINGFUSS
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 FACTS	2
SUMMARY OF THE ARGUMENT	3
ARGUMENT	4
Issues I. & II.	
BEAL'S GUILTY PLEA WAIVED HIS RIGHT TO AN INITIAL APPEARANCE.	4
Issue III.	
CONSTITUTIONALLY EFFECTIVE COUNSEL REPRESENTED DEFENDANT AT HIS GUILTY PLEA.	6
Issue IV.	
BEAL'S GUILTY PLEAS WAS FREELY, VOLUNTARILY, KNOWINGLY AND INTELLIGENTLY MADE AND ENTERED	8
CONCLUSION	9
CERTIFICATE OF SERVICE	10

TABLE OF AUTHORITIES

FEDERAL CASES

Strickland v. Washington, 466 U.S. 668, 694, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)	6
---	----------

STATE CASES

Brown v. State, 731 So.2d 595, 598 (Miss.1999)	4
Campbell v. State, 878 So.2d 227 (Miss. App. 2004)	6, 8
Davis v. State, 967 So.2d 1269 (Miss.App. 2007)	4, 5
Smith v. State, 806 So.2d 1148, 1150 (Miss.Ct.App.2002)	4
Young v. State, 797 So.2d 239, 246 (Miss.Ct.App.2001)	4

STATE STATUTES

Miss. Code Ann. § 97-3-65(1)(a)	1
Miss. Code Ann. § 99-39-11(2)	1

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

JESSIE BEAL

APPELLANT

VS.

NO. 2010-CP-0164-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

STATEMENT OF THE CASE

On May 27, 2009, in the Madison County Circuit Court, Jessie Beal pled guilty to one count of Statutory Rape in violation of *Miss. Code Ann.* § 97-3-65(1)(a). On July 8, 2009, the trial court sentenced Beal to serve Twenty-seven years in the custody of the Mississippi Department of Corrections.

Beal subsequently filed a motion for post-conviction relief, (c.p.4-14). After reviewing the pleadings and court files, the trial court dismissed Beal's motion, presumably pursuant to Mississippi Code Annotated Section 99-39-11(2).

Beal, pro se, timely filed this instant appeal. (C.p.22).

STATEMENT OF FACTS

Beal had sexual relations with and impregnated a 14 year old girl. Defendant was at the time about 35 years of age. After the child was born DNA testing showed Beal to be the biological father.

In the pre-sentence investigation Beal, apparently, claimed he was not the 'instigator' asserting the child mounted him in his sleep, and he knew nothing about what happened.

SUMMARY OF THE ARGUMENT

I. & II.

BEAL'S GUILTY PLEA WAIVED HIS RIGHT TO AN INITIAL APPEARANCE.

The law regarding this issue is clear -- upon the entry of a valid guilty plea many rights are waived. In this instance, the right to an initial appearance, or failure to timely hold an initial appearance were waived when he pled guilty.

Issue III.

CONSTITUTIONALLY EFFECTIVE COUNSEL REPRESENTED DEFENDANT AT HIS GUILTY PLEA.

An attorney's failure to challenge the circumstances of the initial appearance has not been held to be deficient performance. Further, there is no claim of prejudice. Consequently, counsel was Constitutional effective and not deficient.

Issue IV.

BEAL'S GUILTY PLEAS WAS FREELY, VOLUNTARILY, KNOWINGLY AND INTELLIGENTLY MADE AND ENTERED.

Nothing in the petition for post-conviction relief raised any issue regarding the voluntariness of the plea.

ARGUMENT

Issues I. & II.

BEAL'S GUILTY PLEA WAIVED HIS RIGHT TO AN INITIAL APPEARANCE.

With these to initial claims of trial court error Beal asserts he was denied a timely initial appearance and his constitutional rights were violated by the trial court failing to give him an initial appearance.

¶ 3. A trial court's denial of post-conviction relief will not be reversed absent a finding that the trial court's decision was clearly erroneous. *Smith v. State*, 806 So.2d 1148, 1150(¶ 3) (Miss.Ct.App.2002). However, when issues of law are raised, the proper standard of review is de novo. *Brown v. State*, 731 So.2d 595, 598(¶ 6) (Miss.1999).

Davis v. State, 967 So.2d 1269 (Miss.App. 2007).

The law regarding this issue is clear -- upon the entry of a valid guilty plea many rights are waived. In this instance, the right to an initial appearance, or failure to timely hold an initial appearance were waived.

¶ 4. Upon the entry of a valid guilty plea, certain challenges are waived by the defendant. In Davis's case, all of his issues on appeal were waived when he pled guilty to felon in possession of a deadly weapon. We note that Davis does not argue that his guilty plea was invalid. Certain Fourth Amendment violations, including illegal searches, are waived by a guilty plea. *King v. State*, 738 So.2d 240-41 (¶¶ 4-5) (Miss.1999); *Thornhill v. State*, 919 So.2d 238, 241(¶ 16) (Miss.Ct.App.2005). Davis waived his right to an initial appearance. *Battaya v. State*, 861 So.2d 364, 366 (¶¶ 7-8) (Miss.Ct.App.2003). Davis has also waived his right to challenge the sufficiency of the State's evidence. *Young v. State*, 797 So.2d 239, 246(¶ 17) (Miss.Ct.App.2001). For the foregoing reasons, we find no merit to Davis's issues on appeal.

any one
deadly
initial app?

Davis v. State, 967 So.2d 1269 (Miss.App. 2007).

Accordingly, the trial court was correct in dismissing the motion for post-conviction relief, (Cp. 20), as defendant waived his right to challenge any issues regarding his 'initial appearance' when he pled guilty. *Davis, supra*.

Issue III.
CONSTITUTIONALLY EFFECTIVE COUNSEL REPRESENTED
DEFENDANT AT HIS GUILTY PLEA.

Next, defendant claims trial counsel's failure to press the issue of the lateness of the initial appearance was ineffective assistance of counsel.

In *Campbell v. State*, 878 So.2d 227 (Miss. App. 2004), defendant Campbell claimed he was denied an initial appearance. *Id.* at ¶ 7. The reviewing Court in looking at numerous claims, (including the lack of an initial appearance), as ineffective assistance held: "We find the conduct of Campbell's counsel to be in no way deficient. As a result, Campbell's final claim is without merit." *Id.* at ¶ 20.

This issue was presented to the trial court in Beal's petition for post-conviction relief (pg. 3 of petition, pg. 6 of clerk's papers) and was found insufficient to garner relief.

Based upon the holding of *Campbell* such a ruling, dismissing the petition, is consistent with case law and ineffective assistance claims. It is the position of the State that even if counsel had raised the issue before the trial court it could have (and was) waived. Further, there is no claim of prejudice.

¶ 20. Under *Strickland v. Washington*, 466 U.S. 668, 694, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), Campbell has the burden of proving that his counsel's assistance was deficient and that the deficiency resulted in prejudice.

Campbell v. State, 878 So.2d 227 (Miss.App. 2004).

There being no deficient performance nor claim of actual prejudice the trial court was correct in dismissing the petition.

Consequently, no relief should be granted based upon this claim of error.

Issue IV.

BEAL'S GUILTY PLEAS WAS FREELY, VOLUNTARILY, KNOWINGLY AND INTELLIGENTLY MADE AND ENTERED.

The trial court specifically stated in the record at page 13:

The court finds the defendant's plea of guilty is freely, voluntarily, knowingly and intelligently made and entered, and further finds it has a factual basis.

In his petition for post-conviction relief and even now on appeal there is no showing the supposed timing of the initial appearance influenced his decision to plead guilty. There is no claim or assertion of coercion or pressure to plead guilty.

¶ 15. There is no evidence in the record that Campbell pled guilty because he was pressured or threatened by anyone or due to the fear of receiving a thirty year sentence. In addition, Campbell has offered no specific facts to support his claim that he pled guilty because of his counsel's erroneous advice. As a result, we hold that Campbell's guilty plea was knowingly, intelligently, and voluntarily entered.

Campbell v. State, 878 So.2d 227 (Miss.App. 2004).

The trial court had before it for consideration the transcript of the plea hearing and sentencing, plus the criminal file of defendant before the court in reviewing Beal's petition for post-conviction relief. (C.p. 19-20).

The trial court was correct in dismissing the action as there was nothing to overcome the presumption of the trial courts initial findings were correct and valid.

No relief should be granted on this last claim of trial court 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 denial of post-conviction relief.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

BY:


JEFFREY A. KLINGFUSS
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

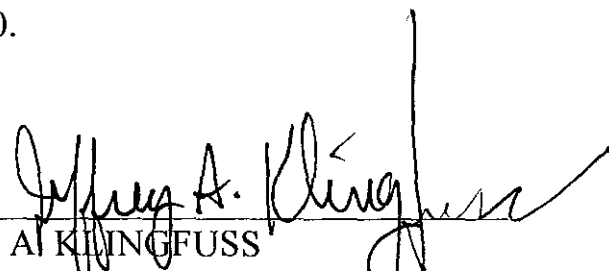
I, Jeffrey A. Klingfuss, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

Honorable William E. Chapman, III
Circuit Court Judge
Post Office Box 1885
Brandon, MS 39043

Honorable Michael Guest
District Attorney
Post Office Box 121
Madison, MS 39046

Jessie Beal, #K9602
L.C.R.C.F. C-35
399 C.O. Brooks Street
Carthage, MS 39051

This the 7th day of September, 2010.



JEFFREY A. KLINGFUSS
SPECIAL ASSISTANT ATTORNEY GENERAL

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