

**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**JEREMY WRIGHT**

**APPELLANT**

**VS.**

**NO. 2010-CP-0294-COA**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR THE APPELLEE**

**APPELLEE DOES NOT REQUEST ORAL ARGUMENT**

**JIM HOOD, ATTORNEY GENERAL**

**BY: BILLY L. GORE  
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**

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**BRIEF FOR THE APPELLEE**

**STATEMENT OF THE CASE**

Jeremy Wright seeks appellate review of summary denial of his motion for post-conviction relief filed in the wake of a guilty plea to a single count of armed robbery. (C.P. at 51-53)

On July 9, 2008, Wright entered a voluntary plea of guilty to an armed robbery of two people occurring in Vicksburg on July 6, 2007. At the close of the plea-qualification hearing, and following a subsequent presentence investigation, Wright, a first time offender, was sentenced to serve twenty (20) years in the custody of the MDOC. (Wright's exhibit 22)

We respectfully submit Wright's post-conviction claims assailing the effectiveness of his lawyer are totally and materially contradicted by unimpeachable evidence found in the record of this cause.

In addition, any claims by Wright, both in his motion for post-conviction relief and on appeal as well, falling outside the context of ineffective counsel, *viz.*, that his arrest was unlawful, his confession involuntary, and his initial appearance unnecessarily delayed were waived by Wright's voluntary plea of guilty.

## STATEMENT OF FACTS

JEREMY WRIGHT, a young 22-year old African-American male with a 7<sup>th</sup> grade education and a GED (Wright's exhibit 21), appeals from the summary denial of his motion for post-conviction relief filed in the Circuit Court of Warren County, M. James Chaney, Jr., Circuit Judge, presiding.

The target of Wright's post-conviction motion was his conviction via an open plea of guilty entered on July 9, 2008, before Frank Vollor, Circuit Judge, to a single count of armed robbery. A second count for armed robbery was *not proessed* by the State. (C.P. at 51)

Judge Vollor, who entertained Wright's guilty plea on July 9, 2008, thereafter sentenced Jones to serve twenty (20) years in the custody of the MDOC.

A year and a half later, on November 12, 2009, Wright filed his "Motion for Post-Conviction Collateral Relief." (C.P. at 4-18) He attached as exhibits thereto several affidavits from family members as well as police reports and other documents, including a petition to enter plea of guilty. (Wright's exhibit 21) All of this is now a part of the appellate record.

On January 22, 2010, Judge Chaney, in a three (3) page written opinion and order, summarily denied Wright's motion for post-conviction relief "[a]fter reviewing the Petition and twenty-two attached exhibits, along with the pleading in the Court and Clerk's files on [Wright's] criminal cases, and *after review of the transcript of his guilty plea . . .*" (C.P. at 51-53; emphasis ours)

Judge Chaney found as a fact and concluded as a matter of law that the petitioner's Motion for Post-Conviction Collateral Relief is without merit and should be dismissed summarily for non-support of Wright's claims. (C.P. at 51-53; appellee's exhibit A, attached)

In his appeal to this Court, Wright, within the context of allegedly ineffective counsel representing him during his guilty plea, raises two (2) identifiable issues with several sub-issues.

**I.** Appellant received the ineffective assistance of his lawyer whose performance was

deficient for recommending a plea to armed robbery instead of pursuing a motion to suppress Wright's confession which was inadmissible for the following reasons:

- A. The confession was the product of an unlawful inducement.
- B. Wright was not given an initial appearance without "unnecessary delay."
- C. The confession was the product of an illegal arrest pursuant to an invalid warrant issued without probable cause.

II. Appellant received ineffective assistance of counsel who failed to adequately investigate the circumstances surrounding the giving of Wright's confession.

Wright's "Petition to Enter Plea of Guilty" is a matter of record, having been attached as exhibit 21 to Wright's motion for post-conviction relief.

A transcript of the plea qualification hearing conducted before Judge Vollar and relied upon by Judge Chaney in denying Wright's motion is, regrettably, not included in the record.

### **SUMMARY OF THE ARGUMENT**

Wright, within the context of ineffective counsel, claims his confession was unlawfully induced by an offer of help if he came to the station house and talked to Sergeant Wilson about the robbery. The content of Wright's affidavits, including his own, cannot be squared with (1) the content of the two statements/confessions that were audio taped by Wilson and later transcribed; (2) Wright's Petition to Enter Plea of Guilty, ¶12, or (3) the two *Miranda* advisories voluntarily signed by Wright prior to his interrogations. (Wright's exhibits 4 and 6) This is unimpeachable evidence in the record totally and materially contradicting Wright and his affidavits.

In addition, Wright's voluntary and valid plea of guilty operated to waive and/or forfeit all non-jurisdictional rights or defects incident to trial, including his Fourth and Fifth Amendment rights. The defendant's right to be free from an unreasonable search and seizure of his person is

within the class of rights which is waivable or forfeitable. **Garcia v. State**, 14 So.3d 749 (Ct.App.Miss. 2009), reh denied, cert denied 15 So.3d 426 (2009); **Jones v. State**, 922 So.2d 31 (Ct.App.Miss. 2006); **Sweat v. State**, 910 So.2d 12 (Ct.App.Miss. 2004), affirm in part, rev and ren in part on other grds 912 So.2d 458 (Miss. 2005); **Young v. State**, 859 So.2d 1025 (Ct.App.Miss. 2003); **Bishop v. State**, 812 So.2d 934, 945 (Miss. 2002).

A defendant waives any claim his confession was coerced by pleading guilty. **Ward v. State**, 914 So.2d 332, 335 (Miss. 2005) [“When one ‘stand[s] in open court and proclaim[s] his guilt,’ he waives the right to later assert his confession was involuntary.”]; **Pevey v. State**, 914 So.2d 1287, 1290 (Ct. App. Miss. 2005) [“To what extent Pevey intended to make a coerced confession claim, he waived this right by pleading guilty as he waived his search and seizure claim.”]; **Swindoll v. State**, 859 So.2d 1063 (Ct.App. Miss. 2003) [Defendant, by entering a valid plea of guilty, explicitly waived any right to suppress his allegedly coerced confession.]

“The burden is upon [Wright] 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). Wright has failed to do so here.

When reviewing the trial court’s decision to deny a petition for post-conviction relief, an appellate court will not disturb the trial court’s factual findings unless they are found to be clearly erroneous. **Brown v. State**, 731 So.2d 595, 598 (¶6) (Miss. 1999).

“A trial judge’s finding will not be reversed unless manifestly wrong.” **Hersick v. State**, 904 So.2d 116, 125 (Miss. 2004).

“However, where questions of law are raised the applicable standard of review is *de novo*,” i.e., afresh or anew. *Id.*

“This court reviews the denial of post-conviction relief under an abuse of discretion



standard.” **Philips v. State**, 856 So.2d 568, 570 (Ct.App.Miss. 2003).

It is enough to say that a review of the findings of fact and conclusions of law reached by Judge Chaney should result in a finding the trial court did not abuse its judicial discretion in finding that the affidavits and exhibits attached to Wright’s motion for post-conviction relief fall short of demonstrating that counsel was ineffective in the constitutional sense for failing to assail Wright’s tape recorded confession(s) which Wright, at this late date, contends were involuntary and/or inadmissible for various reasons.

*First*, the facts, as stated in the affidavits of the defendant as well as the affidavits of family members, were totally and materially contradicted by the record filed in this cause. **Richardson v. State**, 769 So.2d 230, 235-36 (¶14) (Ct.App.Miss. 2000). *See also Knight v. State*, 796 So.2d 262 (Ct.App.Miss. 2000) [Factual assertions by movant belied by unimpeachable evidence in the record]. Counsel cannot be faulted for not acting upon something that never took place.

*Second*, by entering an otherwise voluntary plea of guilty, Wright, who was in custody at the time of his confession, waived his Fourth Amendment right to be secure in his person against an unreasonable seizure, i.e., an illegal arrest, as well as his claims that his confession was involuntary because of promises and improper inducements and an initial appearance unnecessarily delayed. **Pevey v. State**, *supra*, 914 So.2d 1287 (Ct. App. Miss. 2005); **Swindoll v. State**, *supra*, 859 So.2d 1063 (Ct.App. Miss. 2003). *See also Garcia v. State*, *supra*, 14 So.3d 749 (Ct.App.Miss. 2009), reh denied, cert denied 15 So.3d 426 (2009); **Bishop v. State**, *supra*, 812 So.2d 934, 945 (Miss. 2002) citing **Schneckloth v. Bustamonte**, 412 U.S. 218, 248-49, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973); **Sweat v. State**, *supra*, 910 So.2d 12 (Ct.App.Miss. 2004), affm in part, rev and ren in part on other grds 912 So.2d 458 (Miss. 2005); **Young v. State**, *supra*, 859 So.2d 1025 (Ct.App.Miss. 2003). In short, Wright’s Fourth Amendment claims were waived and/or forfeited by his voluntary

plea of guilty.

*Third*, Wright has failed to make out a *prima facie* post-conviction showing he was denied the effective assistance of counsel during his guilty plea for failing to investigate and file a motion to suppress his confession(s). Counsel did, in fact, file a motion to suppress Wright's statements which detracts substantially from Wright's complaint. (See Wright's exhibit 20)

Counsel's performance, contrary to Wright's position, was neither deficient nor did any deficiency prejudice Wright. **Strickland v. Washington**, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); **Williams v. State**, 819 So.2d 532 (Ct.App.Miss. 2001); **Reynolds v. State**, 736 So.2d 500 (Ct.App.Miss. 1999). Given the lack of credibility in the submitted affidavits, it cannot be said that but for counsel's failure to do this or to do that Wright would not have entered his plea of guilty.

#### **ARGUMENT**

**WRIGHT WAS NOT DENIED EFFECTIVE ASSISTANCE OF COUNSEL BECAUSE WRIGHT'S CLAIMS ARE TOTALLY AND MATERIALLY CONTRADICTED BY UNIMPEACHABLE EVIDENCE IN THE RECORD OF THIS CAUSE.**

**MOREOVER, WRIGHT'S VOLUNTARY PLEA OF GUILTY TO ARMED ROBBERY OPERATED TO WAIVE AND/OR FORFEIT HIS RIGHT TO ASSAIL IN A POST-CONVICTION ENVIRONMENT A VIOLATION OF HIS 4<sup>TH</sup> AMENDMENT RIGHTS, INCLUDING CLAIMS HIS ARREST WAS UNLAWFUL AND HIS CONFESSION INVOLUNTARY.**

The order of the circuit judge summarily denying post-conviction relief should be affirmed for the following reasons.

### **Imperfect Record.**

The record is imperfect.

Judge Chaney denied post-conviction relief summarily after a review of “the Petition, and twenty-two attached exhibits, along with the pleadings . . . and *after review of the transcript of his guilty plea.*” (C.P. at 52) [emphasis ours]

The twenty-one (21) exhibits and the Petition to Enter Plea of Guilty are a part of the official record. Regrettably, the transcript of the plea-qualification hearing examined by the circuit judge and relied upon, in part, for his decision-making, is not.

Wright’s claims should be rejected for this reason, if for no other.

“The burden is on the defendant to make a proper record of the proceedings.” **Genry v. State**, 735 So.2d 186, 200 (Miss. 1999). “[T]o the appellant falls the duty of insuring that the record contains sufficient evidence to support his assignments of error on appeal.” **Burney v. State**, 515 So.2d 1154, 1160 (Miss. 1987).

That has not been accomplished here.

### **Ineffective Assistance of Counsel.**

Wright presents his arguments targeting an involuntary confession, illegal arrest, and ill-timed initial appearance within the context of ineffective counsel.

Defense counsel’s performance was not deficient for the following reasons:

*First*, an offer by Sergeant Wilson to “help” Wright if he would come to the station house and talk about the robbery, standing alone without any aggravating factors, is not an inducement sufficient to render a confession involuntary in the constitutional sense.

The case of **Moore v. State**, 986 So.2d 959, cited and relied upon by Wright, is distinguishable in that Moore maintained his innocence while offering an “*Alford* plea.” In addition,

by virtue of basic Fourth Amendment law, the gun which Moore illegally possessed should have been suppressed because accepting as true the testimony of the police officer that Moore's car was stopped for a broken tail light, it was conclusive that Moore, even so, was not violating the traffic law cited by the officer who stopped him because the law only required one working tail light. The Court of Appeals concluded that Moore made out a *prima facie* showing of ineffective counsel, and the case was remanded for an evidentiary hearing on this issue.

In the case at bar, Jeremy Wright never maintained his innocence. Rather, he freely confessed his guilt to Sergeant Wilson and freely acknowledged, under the trustworthiness of the official oath, his guilt in his Petition to Enter Plea of Guilty. Not to be overlooked is the fact that Judge Chaney reviewed the plea-qualification hearing transcript which is not a matter of record. It must be presumed Wright, freely and voluntarily, told the judge he was guilty of a single count of armed robbery and that there was a factual basis for his plea.

The case at bar is also distinguishable from **Dunn v. State**, 547 So.2d 42 (Miss. 1989), cited and relied upon by Wright, because there were factors taken into consideration in **Dunn** other than the police chief's promise to do whatever he could to help the defendant. First, the defendant was personally acquainted with the chief; second, the defendant worked with the chief's wife at a hospital, and third, the defendant had a great deal of confidence and trust in the officer. Nothing similar to this is present in the case at bar.

In this posture, counsel's performance would not be deemed constitutionally deficient for failing to request suppression on this particular ground.

*Second*, Wright's claim, as well as the claims made by family members, that Sergeant Wilson promised to help him is materially contradicted by the record. Wilson's two interviews are totally devoid of any such promise. (Wright's exhibits 4 and 6)

A more prominent reason for finding no deficiency in defense counsel's performance is our observation that there was never a "promise" or "offer" to "help" in the first place. The claims made by Wright in his own affidavit, as well as the affidavits of his family members, are wholly and materially contradicted by unimpeachable evidence in the record that is on file.

Applicable here is the following language found in **Knight v. State**, *supra*, 796 So.2d 262, 264 (Ct.App.Miss. 2001), where we find the following:

\* \* \* \* \* When the trial court can determine that a factual assertion by the movant in a post-conviction relief proceeding is belied by unimpeachable evidence in the transcript of the case that led to conviction, no hearing is required and the trial court may summarily dismiss the motion. *Harris v. State*, 578 So.2d 617, 620 (Miss. 1991).

The unimpeachable evidence found here consists of a petition to enter plea of guilty, ¶12; two *Miranda* advisories, and transcripts of the two interviews conducted by Sergeant Wilson which negate any claim of promises or offers made.

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).

We reiterate. 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**, *supra*, 796 So.2d 262 (Ct.App.Miss. 2001).

"If the defendant's claims are totally contradicted by the record, the trial judge may rely heavily on the statements made under oath." **Richardson v. State**, *supra*, 769 So.2d 230, 235-36 (¶14) (Ct.App.Miss. 2000).

"Solemn declarations in open court carry a strong presumption of verity." **Richardson v.**

**State**, *supra*, 769 So.2d 230, 234 (¶6) (Ct.App.Miss. 2000), quoting **Baker v. State**, 358 So.2d 401, 403 (Miss. 1978).

Wright says he was induced to confess by an offer made by Sergeant Wilson. The affidavits in question, given under the trustworthiness of the official oath, claim that Sergeant Wilson told the affiants he would help Wright if Wright turned himself in and spoke with Wilson about the robbery. According to the affiants, they relayed this information to Jeremy Wright, and Jeremy Wright says he gave this information to his lawyer. (C.P. at 17)

Wright's own affidavit attached to his motion for post-conviction relief claims Sergeant Wilson "reassured me that his offer was legitimate by saying 'I would receive help in getting out of this mess if I answered the officer's questions' " and "he could not help me if I kept lying . . ." (C.P. at 16)

Wright also states in his brief that "[w]hile at the station [house] Officers Tom Wilson and Billy Brown, reassured him that 'He would receive their help in getting out of this mess if he answered their questions.' " (Brief for the Appellant at 6)

According to Wright, but for these so-called promises of help he would not have pled guilty. (C.P. at 17)

Wright also swore that his lawyer never spoke of "suppression" and that he did not learn what a motion to suppress was until after he was sentenced on August 18, 2008. (C.P. at 17) He claims that had he known "about suppression" he would not have pled guilty. (C.P. at 17)

These claims are totally and materially contradicted by Wright's Petition to Enter Plea of Guilty which, in plain and ordinary English, reflects in paragraph 12. " . . . that no officer or agent of any branch of government (Federal, State or local) has made any promise or suggestion of any kind to me, or within my knowledge to anyone else, that I will receive a lighter sentence, or

probation, or any other form of leniency if I plead “GUILTY.” (Wright’s Exhibit 21 (§12); appellee’s exhibit B attached)

What, we ask, could be more clear?

There’s more.

Two *Miranda* advisories signed by Wright on July 11, 2007, and again on July 13, 2007, prior to questioning by Sergeant Wilson, each reflect, again in plain and ordinary English, that “[n]o promises or threats have been made to me and no pressure of any kind has been used against me.” (Wright’s exhibits 4 and 6; appellee’s exhibits C and D, attached.) During both interviews, Officer Wilson, prior to questioning, read the advisory and asked Wright to sign and attest to, *inter alia*, the fact that “[n]o promises or threats have been made to me and no pressure of any kind has been used against me.” (Wright’s exhibits 4 and 6)

Wright did sign and thereby attest.

Also on each occasion, Officer Wilson stated the following: “[S]ince it’s a tape recorder I need you to acknowledge out loud that you, that you signed the waiver.” On both occasions, Wright’s response was an unequivocal “Yes.” (Wright’s exhibits 4 and 6)

In addition to all this, there is nothing in the transcribed interviews reflecting, or even mildly suggesting, that Wilson promised to help Jeremy if Jeremy told him about the robbery. Nothing in the interviews suggests Wilson reassured him his offer was legitimate by saying “I would receive help in getting out of this mess if I answered the officer’s questions.” (C.P. at 16)

Wright also claims that “. . . Wilson’s deceitful tactics - confronting the appellant with an alleged confession from [Timothy] Clark was also impermissible.” (Brief for the Appellant at 17 This never happened. Wright extrapolates to reach this farfetched conclusion. See head note 1 on page 8 of appellant’s brief which refers to page 19 of Wright’s July 13, 2007, interview where

Wilson questions Wright about a car-jacking.

*Third*, the record affirmatively reflects there was probable cause for the issuance of a warrant for Wright's arrest.

Wright turned himself in at the station house after learning that a warrant had been issued for his arrest. The arrest warrant was issued by a neutral and detached magistrate and was based on probable cause. Wright was identified in a video inside a Wal-Mart attempting to use the credit cards stolen from two of the victims. To be sure, there was even probable cause for a warrantless arrest.

Moreover, Wright was not actually arrested until he went to the station house voluntarily and gave a statement confessing to use of the credit cards. For these reasons, defense counsel cannot be faulted for failing to assail the integrity of Wright's arrest.

*Fourth*, counsel's performance was not deficient for failing to question the timing of Wright's initial appearance which took place on July 13<sup>th</sup> immediately after Wright confessed to the robbery. There was no unnecessary delay sufficient to destroy the integrity of a confession just given.

Wright was given an initial appearance sometime after 1:00 p.m. on July 13, 2007, the day he confessed to the robbery. *See* Wright's exhibit 7. Trial counsel was not ineffective for failing to move to suppress the confessions on the ground Wright was denied an initial appearance "without unnecessary delay." Insofar as we can tell, Wright has never claimed that but for not being taken before magistrate without unnecessary delay he would have never entered a plea of guilty.

Finally, the record reflects that counsel did, in fact, file a motion to suppress Wright's statements on June 2, 2008. (Wright's exhibit 20) This seriously brings into question the legitimacy of Wright's claim in his post-conviction papers that counsel never spoke of "suppression," and his related claim that Wright didn't know what a suppression motion was until after he was sentenced



on August 18, 2008. (Wright's exhibit 22)

Consideration of Wright's claims outside the context of ineffective counsel does nothing to aid Wright's cause. His voluntary plea of guilty operated to waive, i.e., give up, any claim his arrest was illegal and/or his confession involuntary. It, likewise, waived any claim his initial appearance flunked the test of "unnecessary delay."

The failure to provide a defendant with an initial appearance is a non-jurisdictional defect which a defendant waives by pleading guilty. *Cf. Hunt v. State*, 11 So.3d 764 (Ct.App.Miss. 2009).

It is well settled that a plea of guilty operates to waive and/or forfeit all non-jurisdictional rights and defects incident to trial. *Rowe v. State*, 735 So.2d 399 (Miss. 1999); *Anderson v. State*, 577 So.2d 390, 392 (Miss. 1991); *Dennis v. State*, 873 So.2d 1045 (Ct.App.Miss. 2004).

We find in *Anderson v. State*, *supra*, 577 So.2d 390, 391 (Miss. 1991), the following language applicable to Wright's complaint:

Moreover, we have recognized that a valid guilty plea operates as a waiver of all non-jurisdictional rights or defects which are incident to trial. *Ellzey v. State*, 196 So.2d 889, 892 (Miss. 1967). We have generally included in this class "those [rights] secured by the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States, as well as those comparable rights secured by Sections 14 and 26, Article 3, of the Mississippi Constitution of 1890." *Sanders v. State*, 440 So.2d 278, 283 (Miss. 1983); *see also Jefferson v. State*, 556 So.2d 1016, 1019 (Miss. 1989). We take this opportunity to specifically include in that class of waivable or forfeitable rights the right to a speedy trial, whether of constitutional or statutory origin.

This view is in accord with that of our sister states. [citations omitted]

This rule also prevails in the federal arena. [citations omitted; emphasis ours]

"A defendant is allowed to waive many important rights." *Bishop v. State*, *supra*, 812 So.2d

934, 945 (Miss. 2002). Included in those rights are Fourth Amendment rights. The truth of this observation is derived from the following language in **Bishop**:

By pleading guilty a defendant waives his constitutional rights against self-incrimination, to confront witnesses, and the requirement to have each element of the offense proved beyond a reasonable doubt. *See Chunn v. State*, 669 So.2d 29, 32 Miss. 1996); *Jefferson v. State*, 556 So.2d 1016, 1019 (Miss. 1989). A defendant is allowed to waive many important rights. *See Michigan v. Jackson*, 475 U.S. 625, 106 S.Ct. 1404, 89 L.Ed.2d 631 (1986) (waiver of Sixth Amendment right to counsel); *North Carolina v. Butler*, 441 U.S. 369, 374-75, 99 S.Ct. 1755, 60 L.Ed.2d 286 (1979) (waiver of Fifth Amendment or *Miranda* rights); ***Schneckloth v. Bustamonte*, 412 U.S. 218, 248-49, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973) (waiver of Fourth Amendment rights by persons not in custody); *Illinois v. Maxwell*, 173 Ill.2d 102, 219 Ill. Dec. 1, 670 N.E.2d 679, 686-87 (1996) (waiver of sentencing jury in death penalty did not violate due process where trial court conducted extensive inquiry and determined that defendant's waiver was knowing, intelligent, and voluntary). [emphasis in bold ours]**

*See also Sweat v. State*, *supra*, 910 So.2d 12 (Ct.App.Miss. 2004), *affm* in part, *rev* and *ren* in part on other grds 912 So.2d 458 (Miss. 2005); *Young v. State*, *supra*, 859 So.2d 1025 (Ct.App.Miss. 2003), both of which stand for the proposition that a plea of guilty waives a Fourth Amendment search and seizure claim.

A defendant, by pleading guilty, waives, gives up, and forfeits any claim his confession was coerced. *Pevey v. State*, *supra*, 914 So.2d 1287 (Ct.App.Miss. 2005); *Swindoll v. State*, *supra*, 859 So.2d 1063 (Ct.App.Miss. 2003). *Cf. Ward v. State*, *supra*, 914 So.2d 332 (Ct.App.Miss. 2005).

Not every motion for post-conviction relief filed in the trial court must be afforded a full adversarial hearing. *Hebert v. State*, 864 So.2d 1041 (Ct.App.Miss. 2004). *See also Rowland v. Britt*, 867 So.2d 260, 262 (Ct.App.Miss. 2003)[“(T)he trial court is not required to grant an evidentiary hearing on every petition it entertains.”]

In the case *sub judice*, the trial judge properly dismissed Wright's claims for post-conviction

collateral relief without the benefit of an evidentiary hearing because his claims did not involve disputed questions of fact requiring a hearing and were manifestly without merit.

Wright has failed to establish by a preponderance of the evidence he is entitled to any relief. **Todd v. State**, 873 So.2d 1040 (Ct.App.Miss. 2004).

Stated differently, Wright, by pleading guilty and waiving his claims, has failed to demonstrate “a claim that is *procedurally alive which substantially shows that he has been denied a state or federal right.*” **Horton v. State**, 584 So.2d 764, 767 (Miss. 1991).

Wright also claims his lawyer was ineffective because he failed to adequately investigate the circumstances surrounding the confession and the applicable law. Defense counsel filed a motion to suppress Wright’s statements but on different grounds. (Wright’s exhibit 20) Wright’s arrest was not unlawful and his confession was not a product of an unlawful inducement in the form of an offer of help.

Nothing in the record indicates Wright’s lawyer recommended that he plea. Wright could have just as easily made that election himself after one count of the indictment was the target of a *nolle prosequi*. But even if counsel made that recommendation, such was reasonable given the fact a trial by jury could have resulted in a sentence of life imprisonment. Wright entered an open plea to a single count and got twenty (20) years.

Even if counsel informed Wright and his mother that Wright’s statement would prevent him from prevailing at trial and that it would be best to plead guilty, this is reasonably sound advice and trial strategy.

We note the difference between the crime originally charged - two counts of armed robbery - and the crime to which Wright entered his guilty plea - a single count of armed robbery. By pleading guilty to a single count, Wright received a full meal deal. This facet of the case was specifically

noted by the circuit judge in his order denying relief. Such is yet another reason why denial of the requested relief was not an abuse of judicial discretion.

Finally, in his Petition to Enter Plea of Guilty Wright swore to his belief “. . . that my lawyer has done all that anyone could do to counsel and assist me [and] I AM SATISFIED WITH THE ADVICE AND HELP HE HAS GIVEN ME.” (Wright’s exhibit 21, ¶13; emphasis in original) There was no complaint then and there that Mr. Southerland had botched the motion to suppress evidence. That complaint has been voiced for the first time here and now.

In this posture, all the hullabaloo over counsel’s failure to move to suppress statements based upon an alleged promise of “help” if he talked with the authorities is drivel hopefully destined for deaf ears.

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**, *supra*, 358 So.2d 401, 403 (Miss. 1978); **Fairley v. State**, 812 So.2d at 263, ¶ 11, citing **Richardson v. State**, *supra*, 769 So.2d 230, 235-36 (Ct.App.Miss. 2000), ¶ 14. That presumption has not been overcome here.

Put another way, the Court places “. . . a strong presumption of validity upon an individual’s statements made under oath.” **Mowdy v. State**, 638 So.2d 738, 743 (Miss. 1994).

In **Taylor v. State**, 766 So.2d 830, 834 (Ct.App.Miss. 2000), the Court of Appeals held that Taylor was not denied the effective assistance of legal counsel during his plea of guilty to robbery and attempted robbery where Taylor stated during the plea-qualification hearing he was satisfied with his lawyer’s representation and his lawyer had not pressured him into pleading guilty. The Court also held that “[b]ecause Taylor pled guilty, he waived any defense he might have had to the charges.” 766 So.2d at 834-35. *See also Elliott v. State*, No. 2008-CA-00948-COA (¶23) decided

November 3, 2009 [Not Yet Reported], where “Elliott’s testimony at the plea hearing contradict[ed] his contentions . . . Elliott affirmed that he was ‘totally satisfied’ with his counsel’s legal representation.”

Same here.

In short, Wright has failed to demonstrate his lawyer’s performance was deficient and that the deficient performance prejudiced the defendant. **Strickland v. Washington**, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); **Williams v. State**, 819 So.2d 532 (Ct.App.Miss. 2001); **Reynolds v. State**, 736 So.2d 500 (Ct.App.Miss. 1999).

## CONCLUSION

Defense counsel's failure to do this and do that as claimed by Wright did not fall below constitutional standards for competence.

It must be presumed that during the plea-qualification hearing, Wright freely acknowledged, in court and under the trustworthiness of the official oath, that on or about the 30<sup>th</sup> day of January 2008, he, along with his co-defendant, Timothy Clark, committed the crime charged. (Wright's exhibit 21 (§14)).

Although Wright's post-conviction papers and his appellate brief warrant an A for word processing, legal research, and English grammar, the legal premise upon which his claims are based lacks appeal on appeal.

Wright has failed to establish by a preponderance of the evidence he is entitled to any relief. **Todd v. State**, 873 So.2d 1040 (Ct.App. Miss. 2004).

In this posture, Judge Chaney's written order denying relief summarily was both judicious and correct.

Miss.Code Ann. § 99-39-11 (Supp. 1998) 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. **Garlotte v. State**, 530 So.2d 693 (Miss. 1988) ["This case presents an excellent example of the appropriate use of the summary disposition provision of §99-39-11(2)]; **Falconer v. State**, 832 So.2d 622 (Ct.App.Miss. 2002) ["(W)e affirm the dismissal of

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IN THE CIRCUIT COURT OF THE NINTH JUDICIAL DISTRICT  
OF WARREN COUNTY, MISSISSIPPI

FILED

2010 JAN 22 AM 3:37

SHELLY ASHLEY-PALMERTREE  
CIRCUIT CLERK  
WARREN CO., MS

JEREMY WRIGHT

v.

NO. 09,0128CI

STATE OF MISSISSIPPI

OPINION AND ORDER

CAME ON before the Court a Petition for Post Conviction Relief filed by Jeremy Wright. Wright pled guilty to one count of Armed Robbery. A second count for Armed Robbery was Nol Prossed by the State. Wright's Peition to Enter Plea of Guilty was an "open plea." After ordering a pre-sentence investigation, Wright was sentenced to twenty (20) years on one count of Armed Robbery.

In his Petition, Wright alleges that his sentence should be overturned on three (3) grounds:

- 1) Ineffective assistance of counsel for recommending that he plea guilty and for not pursuing a motion to suppress his confession;
- 2) Involuntary confession as a result of promises, threats, and improper inducements and the failure to provide him with an initial appearance; and



- 3) His confession was inadmissible as an exploitation of an illegal arrest.

After reviewing the Petition and twenty-two attached exhibits, along with the pleadings in the Court and Clerk's files on his criminal cases, and after review of the transcript of his guilty plea, the Court finds that the Petition is without merit and should be dismissed.

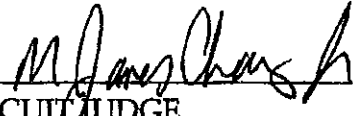
The exhibits attached to the Petition fail to show ineffective assistance of counsel. Based upon the statements made to police, including the statement of Wright, there appeared to be very little chance of success, and had Wright pursued a jury trial and lost he was subject to a possible life sentence. Furthermore, Wright provides nothing other than his own conclusions to support that claim.

Likewise, as to his claim that the confession was involuntary, there is nothing in the Petition or twenty-two (22) exhibits to support that claim either. In addition, the Petitioner's statement and his Petition to Enter Guilty Plea along with the transcript of the guilty plea hearing before Judge Vollor all indicate that Petitioner was satisfied with his legal representation and that he did in fact commit the crime alleged in the indictment and further that his plea was voluntary and that he understood what he was doing. For all of the above reasons, the Court is of the opinion that this petition should be dismissed.



IT IS THEREFORE ORDERED AND ADJUDGED that Jeremy Wright's  
Petition for Post Conviction Relief be, and the same is, hereby denied. It is  
further Ordered that a copy of this Order be sent to Petitioner.

ORDERED AND ADJUDGED this the 21 day of January, 2010.

  
\_\_\_\_\_  
CIRCUIT JUDGE

IN THE CIRCUIT COURT OF Warren COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

VS.

08,0065 CRY2  
NO. 08,0064(2)

Jeremy Wright  
SS# 456-63-2282 DOB 11/1/1985  
PLACE OF BIRTH \_\_\_\_\_  
U.S. CITIZEN Yes

**PETITION TO ENTER PLEA OF GUILTY**

The Defendant, after having been first duly sworn, on an oath represents and states unto the Court the following:

1. My full name is Jeremy Nathan Wright

and I am also known as : Jeremy Wright

and I request that all proceedings against me be made in my true name. This petition has been read and explained to me by my lawyer and I understand the contents herein.

2. I am represented by a lawyer, whose name is Bryan P. Southerland

3. I wish to plead GUILTY to the charge(s) of Armed Robbery -  
one count

4. I told my lawyer all of the facts and circumstances known to me about the charge(s) against me. I believe my lawyer is fully informed on all such matters. My lawyer has counseled and advised me of the nature of each charge; on any and all lesser included charges; and on all possible defenses that I might have in this case

5. My lawyer has advised me as to the probabilities of my conviction on the charges

**SCANNED**

with which I am charged and thoroughly discussed all aspects of my case with me. My lawyer has made no threats or promises of any type or kind to induce me to enter this plea of guilty, however, and the decision to seek the entry of this plea was my own and mine alone, based on my own reasons and free from any outside coercive influences.

6. I understand that I may plead "Not Guilty" to any offense charged against me. If I choose to plead "Not Guilty" the Constitution guarantees me:

- (a) the right to a speedy and public trial by jury,
- (b) the right to see, hear and face in open court all witnesses called to testify against me; and the right to cross-examine those witnesses,
- (c) the right to use the power and process of the Court to compel the production of any evidence, including the attendance of any witnesses in my favor,
- (d) the right to have the assistance of a lawyer at all stages of the proceedings,
- (e) the presumption of innocence, i.e., the State must prove beyond a reasonable doubt that I am guilty, and
- (f) also the right to take the witness stand at my sole option; and if I do not take the witness stand, I understand, at my option, the jury may be told that this shall not be held against me,
- (g) I would have a right to appeal my conviction and sentence to the Supreme Court of Mississippi.

Knowing and understand the Constitutional guaranties set forth in this paragraph, I hereby waive them and renew my desire to enter a plea of Guilty.

7. I also understand that if I plead "Guilty", the Court may impose the same punishment as if I had plead "Not Guilty", stood trial and been convicted.

8. I know that if I plead "Guilty" to this charge (these charges), the possible sentence is 3 years (minimum) to less than Life Expectancy (maximum) years imprisonment and/or a fine of \$ \_\_\_\_\_ (minimum) to \$ \_\_\_\_\_ (maximum).

I know also that the sentence is up to the Court; that the Court is not required to carry out any understanding made by me and my attorney with the District Attorney; and further, that the Court is not required to follow the recommendation of the District Attorney, if any. The District Attorney will take no part other than providing to the Court, Police Reports and other factual information as requested by the Court; and the District Attorney shall make no recommendations to the Courts concerning my sentence except as follows: 20 years MDOE, 7 years

suspended, 13 years to serve, 5 years suspended probation, each count to run concurrent, cooperated and telling per memorandum of understanding Open Plea BBS  
JNW

9. (a) I have been convicted of no felonies in this or any other state or of the United States, except as follows: NONE

(b) I have been convicted of no misdemeanors in any court of any state except as follows: NONE

10. I am \_\_\_\_\_ am not X presently on probation or parole. I understand that by pleading guilty in this case this may cause revocation of my probation or parole, and that this could result in a sentence of \_\_\_\_\_ years in that case.

I further understand that if my parole or probation is revoked, any sentence in that case shall be consecutive to or in addition to any sentence in this case.

11. I am 22 years of age. I have gone to school up to 7<sup>th</sup> grade and including GED; my physical and mental health is presently satisfactory. At this time I am not under the influence of any drugs or intoxicants (nor was I at the time the crime was committed), except: N/A

12. I declare that no officer or agent of any branch of government (Federal, State or local) has made any promise or suggestion of any kind to me, or within my knowledge to anyone else, that I will receive a lighter sentence, or probation, or any other form of leniency if I plead "GUILTY", except: NONE

13. 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. I recognize that if I have been told by my lawyer that I might receive probation or a light sentence, this is merely his prediction and is not binding on the Court.

14. I plead "GUILTY" and request the court to accept my plea of "GUILTY" and to have entered my plea of "GUILTY" on the basis of (state involvement in crime) I was involved in an armed robbery with my codefendant Timothy Clark.

15. I OFFER MY PLEA OF "GUILTY" FREELY AND VOLUNTARILY AND OF MY OWN ACCORD AND WITH FULL UNDERSTANDING OF ALL THE MATTERS SET FORTH IN THE INDICTMENT AND IN THIS PETITION AND IN THE CERTIFICATE OF MY LAWYER WHICH FOLLOWS.

16. I further state that I wish to waive the reading of the indictment or information in open Court. I request the Court to enter my plea of "GUILTY" as set forth in Paragraph 14. If not applicable, N/A

17. Habitual Criminal Paragraph. If not applicable, N/A

(Set forth the language of the appropriate Statute including punishment.)

Signed and sworn to be me on this 9<sup>th</sup> day of July  
20 08, with the full knowledge that every person who shall wilfully and corruptly swear, testify, or affirm falsely to any material matter under any oath, affirmation, or declaration legally administered in any matter, cause, or proceeding pending in any court of law or equity shall upon conviction be punished by imprisonment in the penitentiary not exceeding ten (10) years.

James Wright  
DEFENDANT

WITNESS:

[Signature]  
DEFENDANT'S ATTORNEY

STATE OF MISSISSIPPI

COUNTY OF Warren

Sworn to and subscribed before me this 9 day of July  
20 08.

[Signature]  
CIRCUIT CLERK

CERTIFICATE OF COUNSEL

The undersigned, as lawyer and counselor for the above Defendant hereby certifies:

1. I have read and fully explained to the Defendant the allegations contained in the indictment in this case.
2. To the best of my knowledge and belief the statements, representations and declarations made by the Defendant in the foregoing petition are in all respects accurate and true.
3. I have explained the maximum and minimum penalties for each count to the Defendant, and consider him/her competent to understand the charges against him/her and the effect of his/her petition to enter a plea of guilty.
4. The plea of "GUILTY" offered by the Defendant in this Petition accords with my understanding of the facts he/she related to me and is consistent with my advice to the Defendant.
5. In my opinion the plea of "GUILTY" as offered by the Defendant in this Petition is voluntarily and understandingly made. I recommend that the Court accept the plea of "GUILTY".
6. Having discussed this matter carefully with the Defendant, I am satisfied, and I hereby certify, in my opinion, that he/she is mentally and physically competent; there is no mental or physical condition which would affect his/her understanding of these proceedings; further, I state that I have no reason to believe that he/she is presently operating under the influence of drugs or intoxicants. (Any exceptions to this should be stated by counsel on the record.)

Signed by me in the presence of the Defendant above named and after full discussion of the contents of this certificate with the Defendant, this 9<sup>th</sup> day of July 2006.

  
\_\_\_\_\_  
ATTORNEY FOR DEFENDANT

**VICKSBURG POLICE DEPARTMENT**  
**CRIMINAL INVESTIGATIONS/NARCOTICS DIVISION**

P.O. Box 150/ 820 Veto Street  
Vicksburg, MS 39181

Phone (601) 636-6393

Fax (601) 630-8058

**RIGHTS AND WAIVER FORM**

Name: Jeremy Wright Place: VPD

Address: 1422 Crawford Date: 7-11-07  
Vicksburg, MS

Time: 10:52 AM DOB: 11-1-85 Age: 21

SSN: 426-63-2222 Phone: \_\_\_\_\_

Race: A Sex: A Education: 7th

**YOUR RIGHTS:**

Before we ask you any questions, you must understand your rights. You have the right to remain silent. Anything you say can and may be used against you as evidence. You have the right to have an attorney present during any questioning. If you cannot afford an attorney, one will be appointed for you before any questioning. If you choose to answer any questions or make a statement, you have the right to stop at any time. You may waive any of these rights. I (have read) or (have read to me) my rights and fully understand these rights.

Given by: [Signature]

Signed: Jeremy Wright

**WAIVER:**

I have read the statement of my rights shown above. I understand what my rights are. I am willing to answer questions and make a statement. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure of any kind has been used against me.

Signed: Jeremy Wright

Witness: [Signature]

Witness: \_\_\_\_\_

Time: 10:54 PM

**EXHIBIT**

Exhibit 4

msl



**VICKSBURG POLICE DEPARTMENT**  
**CRIMINAL INVESTIGATIONS/NARCOTICS DIVISION**

P.O. Box 150/ 820 Veto Street  
Vicksburg, MS 39181

Phone (601) 636-6393

Fax (601) 630-8058

**RIGHTS AND WAIVER FORM**

Name: Jeremy Wright Place: VPD

Address: 1628 Crawford Date: 7-13-07

Vicksburg, MS

Time: 0911 HR DOB: 11-1-85 Age: 21

SSN: 426-63-2282 Phone: \_\_\_\_\_

Race: BL Sex: M Education: GED

**YOUR RIGHTS:**

Before we ask you any questions, you must understand your rights. You have the right to remain silent. Anything you say can and may be used against you as evidence. You have the right to have an attorney present during any questioning. If you cannot afford an attorney, one will be appointed for you before any questioning. If you choose to answer any questions or make a statement, you have the right to stop at any time. You may waive any of these rights. I (have read) or (have read to me) my rights and fully understand these rights.

Given by: [Signature]

Signed: Jeremy Wright

**WAIVER:**

I have read the statement of my rights shown above. I understand what my rights are. I am willing to answer questions and make a statement. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure of any kind has been used against me.

Signed: Jeremy Wright

Witness: [Signature]

Time: 0913 HR

**EXHIBIT**

tabbies

Falconer's motion for post-conviction relief as manifestly without merit."].


Summary denial was proper because Wright's post-conviction claims targeting the effectiveness of his lawyer, the legality of his arrest, the confession elicited in its wake, and the integrity of his initial appearance were manifestly without merit. No further fact-finding was required, and relief was properly denied without the benefit of an evidentiary hearing.

Appellee respectfully submits this case is devoid of any claims worthy of an evidentiary hearing or vacation of the guilty plea voluntarily entered by Jeremy Wright. Accordingly, the judgment entered in the lower court summarily denying Wright's motion for post-conviction collateral relief should be affirmed.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

BY: 

BILLY L. GORE  
SPECIAL ASSISTANT ATTORNEY GENERAL  
MISSISSIPPI BAR NO. 

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

## 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 M. James Chaney, Jr.**  
Circuit Court Judge, District 9  
Post Office Box 351  
Vicksburg, MS 39181-0351

**Honorable Richard Smith**  
District Attorney, District 9  
Post Office Box 648  
Vicksburg, MS 39181

**Jeremy Wright, #141627**  
H.C.C.F.  
23234 Hwy 12 East  
Lexington, MS 39095

This the 6th day of August, 2010.

  
\_\_\_\_\_  
BILLY L. GORE  
SPECIAL ASSISTANT ATTORNEY GENERAL

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