

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

TROY ANTHONY WILLIAMS

APPELLANT

VS.

NO. 2010-CP-0333

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE ISSUES

- I. THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI DID HAVE SUBJECT MATTER JURISDICTION IN THE APPELLANT'S CASE.
- II. THE APPELLANT'S GUILTY PLEA WAS VALID AND LEGAL.
- III. THE APPELLANT DID NOT RECEIVE INEFFECTIVE ASSISTANCE OF COUNSEL.

STATEMENT OF THE FACTS

The Appellant, Troy Anthony Williams was indicted for two counts of sexual battery pursuant to Miss. Code Ann. §97-3-95(1)(d). The victim was his eight-year-old step daughter. The Appellant entered a guilty plea on January 11, 2007. He was sentenced to twenty years on each count with ten suspended and ten to serve with the sentences to run concurrently. The Appellant filed a Motion for Post Conviction Relief approximately three years later. The Motion was dismissed by the trial court.

SUMMARY OF THE ARGUMENT

The trial court's dismissal of the Appellant's Motion for Post Conviction Relief should be affirmed as the record supports the trial court's dismissal. The trial court did not lack jurisdiction

over the matter. While the Appellant claims that he did not reside in Mississippi during the entire time period alleged in the indictment, he provided no proof to support the claim. Furthermore, he admitted in the plea hearing that the criminal acts occurred in Jackson County, Mississippi.

Also, the record fully evidences that the Appellant's plea was valid and legal. A factual basis for the crime was established and the record shows that the plea was voluntary. Additionally, the trial court properly advised the Appellant regarding the rights he was waiving by pleading guilty and the Appellant was sufficiently adjudicated guilty by the trial court.

Additionally, the Appellant failed to establish that he was denied effective assistance of counsel. He failed to establish both prongs of *Strickland* and admitted during his plea hearing that he was satisfied with his counsel's representation.

ARGUMENT

The trial court's denial of a motion for post-conviction relief should not be reversed "absent a finding that the trial court's decision was clearly erroneous." *Crowell v. State*, 801 So.2d 747, 749 (Miss. Ct. App. 2000) (citing *Kirksey v. State*, 728 So.2d 565, 567 (Miss. 1999)) (*emphasis added*). The trial court's dismissal of the Appellant's Motion for Post Conviction Relief was not clearly erroneous for the reasons set forth below.

I. THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI DID HAVE SUBJECT MATTER JURISDICTION IN THE APPELLANT'S CASE.

The Appellant first contends that "the Circuit Court of Jackson County, Mississippi did not have jurisdiction of the subject matter in this case." (Appellant's Brief p. 8). In support of his contention that the trial court lacked jurisdiction, the Appellant argues that "there is no proof whatsoever that the alleged acts occurred in Jackson County, Mississippi." (Appellant's Brief p. 8). This argument, however, fails.

“The local jurisdiction of all offenses . . . shall be in the county where committed.” *Edwards v. State*, 749 So.2d 291, 293 (Miss. Ct. App. 1999) (quoting Miss. Code Ann. §99-11-3). “Therefore, the circuit courts of this state have subject matter jurisdiction of the prosecutions of criminal offenses.” *Id.* (citing *Jefferson v. State*, 556 So.2d 1016, 1020 (Miss. 1989)). While the Appellant claims that he and his family lived in Pennsylvania from November 2001 through April 2003, he offers no evidence to support this claim other than his own affidavit. “It is the duty of the defendant to provide authority and support for the issues that are raised on appeal.” *Reid v. State*, 910 So.2d 615, 619 (Miss. Ct. App. 2005) (citing *Rigby v. State*, 826 So.2d 694 (Miss. 2002)). Additionally, the Appellant admitted during his plea hearing that he committed the crimes in Jackson County, Mississippi:

THE COURT: . . . What makes you think you’re guilty?

THE APPELLANT: During the period of 2002 to 2004, in Jackson County, Mississippi, I touched my stepdaughter in an inappropriate way on her body.

(Transcript p. 15). “Solemn declarations in open court carry a strong presumption of verity.” *Truitt v. State*, 958 So.2d 299, 301 (Miss. Ct. App. 2007) (quoting *Harris v. State*, 806 So.2d 1127 (Miss. 2002)). As such, this issue is without merit.

II. THE APPELLANT’S GUILTY PLEA WAS VALID AND LEGAL.

The Appellant next argues that “the guilty plea and sentenced imposed were unlawful and violated [his] constitutional rights.” (Appellant’s Brief p. 9). Uniform Circuit and County Court Rule 8.04(A) sets forth the following requirements for a valid and legal guilty plea:

- ...
3. *Voluntariness.* Before the trial court may accept a plea of guilty, the court must determine that the plea is voluntary and intelligently made and that there is a factual basis for the plea. A plea of guilty is not voluntary if induced by fear, violence, deception, or improper inducements. A showing that the plea of guilty was voluntarily made must appear in the record.

4. *Advice to the Defendant.* When the defendant is arraigned and wishes to plead guilty to the offense charged, it is the duty of the trial court to address the defendant personally and inquire and determine:

- a. That the accused is competent to understand the nature of the charge;
- b. That the accused understands the nature and consequences of the plea, and the maximum and minimum penalties provided by law;
- c. That the accused understands that by pleading guilty (s)he waives his/her constitutional rights of trial by jury, the right to confront and cross-examine adverse witnesses, and the right against self-incrimination; if the accused is not represented by an attorney, that (s)he is aware of his/her right to an attorney at every stage of the proceeding and that one will be appointed to represent him/her if (s)he is indigent.

...

Each of these requirements were met. As shown below, a factual basis for the crime was established and the record shows that the plea was voluntary. Additionally, the trial court properly advised the Appellant regarding the rights he was waiving by pleading guilty. (Transcript p. 10 - 13). Also, as shown below, the Appellant was sufficiently adjudicated guilty by the trial court. For those reasons the plea is valid and legal.

A. There was a factual basis for the plea.

In support of his argument that the plea and sentence are unlawful, the Appellant first asserts that “no factual basis existed to support a finding of guilty in this matter.” (Appellant’s Brief p. 9). The trial court, however, held in its Order denying the Motion for Post Conviction Relief that “it is clear from the record that there was a sufficient factual basis to accept the guilty plea” specifically noting that the Appellant did not indicate that he wished to contest the allegations in the indictment, that the State informed the trial court that they could prove through the child’s testimony and other corroborating testimony that the Appellant committed sexual battery, and that the Appellant admitted that he was a “sexual offender” and he touched his step daughter inappropriately. (Record p. 275 - 276).

The Mississippi Supreme Court has held that “[t]here are a number of forms in which this

factual basis may be found.” *Corley v. State*, 585 So.2d 765, 767 (Miss. 1991). “In the end there must be enough that the court may say with confidence the prosecution could prove the accused guilty of the crime charged, ‘that the defendant’s conduct was within the ambit of that defined as criminal.’” *Id.* (quoting *United States v. Broce*, 488 U.S. 563, 109 S.Ct. 757, 764, 102 L.Ed.2d 927, 936 (1989)). “A factual showing does not fail merely because it does not flesh out the details which might be brought forth at trial.” *Drake v. State*, 823 So.2d 593, 594 (Miss. Ct. App. 2002) (quoting *Corley v. State*, 585 So.2d 765, 767 (Miss. 1991)). “Fair inference favorable to guilty may facilitate the finding.” *Clark v. State*, 854 So.2d 1086, 1089 (Miss. Ct. App. 2003). Additionally, the Mississippi Supreme Court has held that with regard to such claims, the Court “is not limited to the transcript of [the] guilty plea hearing, but [is] allowed to review the record as a whole.” *Boddie v. State*, 875 So.2d 180, 183 (Miss. 2004) (citing *Gaskin v. State*, 618 So.2d 103, 106 (Miss. 1993)).

As in *Drake v. State*, 823 So.2d 593, 594 (Miss. Ct. App. 2002), the indictment setting forth the elements was read in open court and the indictment itself is a part of the record. (Transcript p. 7 and Record p. 10). “It has been held that ‘if sufficiently specific, an indictment or information can be used as the sole source of the factual basis for a guilty plea.’” *Id.* (quoting *U.S. v. Hinojosa-Lopez*, 130 F.3d 691, 695 (5th Cir. 1997)). See also *Madden v. State*, 991 So.2d 1231, 1235 (Miss. Ct. App. 2008). Additionally, as in *Simoneaux v. State*, 29 So.3d 26, 33 (Miss. Ct. App. 2009), the trial court specifically asked the Appellant if he had read the indictment, if his attorney had explained the indictment, and if he understood the indictment. (Transcript p. 6 - 7). The Appellant indicated that he had. (Transcript p. 6 - 7). The State also stated for the record that if the case went to trial, the State “would put forth evidence including the child’s testimony, as well as other corroborating evidence, that in fact there was digital penetration and that he did in fact insert his penis as well.” (Transcript p. 15). Moreover, the Appellant stated on the record as follows: “During the period of

2002 to 2004, in Jackson County, Mississippi I touched my stepdaughter in an inappropriate way on her body.” (Transcript p. 15). This coupled with the Appellant’s admission that he read and understood the Petition to Plead Guilty which indicated that he was served with the indictment alleging that he “(1) committed sexual battery upon [his stepdaughter], under 14, by inserting his finger in her vagina and (2) inserted his penis in her vagina while he was 24 months older” clearly establishes that there was a factual basis for the plea. (Transcript p. 4 and Record p. 86).

B. The plea was knowingly, intelligently, and voluntarily given.

Also in support of his argument that the plea and sentence are unlawful, the Appellant asserts that his plea “was not freely, knowingly, voluntarily, and intelligently entered.” (Appellant’s Brief p. 14). In its Order denying the Motion for Post Conviction Relief, the trial court responded to this issue holding that after reviewing the transcript of the plea hearing, it “found that the plea was given freely, voluntarily and with a full understanding of constitutional rights and the consequences of the guilty plea.” (Record p. 274).

“The burden of proving that a guilty plea was involuntary is on the defendant and must be proven by a preponderance of the evidence.” *Ray v. State*, 876 So.2d 1032, 10 1036 (Miss. Ct. App. 2004) (quoting *Terry v. State*, 839 So.2d 543, 545 (Miss. Ct. App. 2002)). “A plea is considered “voluntary and intelligent” only if the defendant is advised about the nature of the charge against him and the consequences of the entry of the plea.” *Id.* (citing *Alexander v. State*, 605 So.2d 1170, 1172 (Miss. 1992)). The trial court correctly held that the Appellant did not meet his burden of proving that the plea was not voluntarily given.

The record clearly evidences that the Appellant was advised about the nature of the charge against him and the consequences of the plea. As shown above, with regard to the factual basis issue, the Appellant was fully informed about the nature of the crimes. He was also advised of the

maximum and minimum sentences for the crimes. (Transcript p. 8 and Record p. 86). He was informed of the rights he was waiving by pleading guilty and indicated that he understood those rights. (Transcript p. 10 - 13).

Nonetheless, the Appellant argues that his plea could not have been voluntary because the trial court never informed him of the elements of the crimes. (Appellant's Brief p. 14). However, "[t]he United States Supreme Court has 'never held that the judge must himself explain the elements of each charge to the defendant on the record. Rather, the constitutional prerequisites of a valid plea may be satisfied where the record accurately reflects that the nature of the charge and the elements of the crime were explained to the defendant by his own, competent counsel.'" *Simoneaux v. State*, 29 So.3d 26, 34 (Miss. Ct. App. 2009) (quoting *Bradshaw v. Stumpf*, 545 U.S. 175, 125 S.Ct. 2398, 162 L.Ed.2d 143 (2005)). The record indicates that the Appellant's counsel did explain the elements of the crime to the Appellant and that the Appellant understood those elements. (Transcript p. 4 and 7).

"A defendant's guilty plea is sufficient if it is a voluntary and knowledgeable plea with an 'independent evidentiary suggestion of guilt.'" *Id.* (quoting *Reynolds v. State*, 521 So.2d 914, 917 (Miss. 1988)). Therefore, a court may accept a plea if the court is satisfied that there is evidence such that the State, if so required, could prove the defendant's guilty of the crime charged." *Id.* The record in this case certainly suggests that the trial court was satisfied that the State could prove that the Appellant was guilty of sexual battery. As such, the plea was knowingly, intelligently, and voluntarily given.

C. The plea was properly accepted.

Finally, the Appellant also asserts that his plea and sentence are unlawful because he "has never been adjudicated guilty by the Circuit Court of Jackson County, Mississippi." (Appellant's

Brief p. 20). The Appellant cites to Uniform Rule of Circuit and County Court 11.01 in support of this assertion. Rule 11.01 states, in pertinent part, as follows:

. . . A defendant is adjudged guilty when the defendant has been found guilty by a verdict of the jury, found guilty by the court sitting as the trier of fact, on the acceptance of a guilty plea, or on acceptance of a plea of nolo contendere. . . .

(*emphasis added*). The language of the rule clearly states that the Appellant was adjudicated guilty upon the acceptance of his guilty plea. The trial court did accept his guilty plea as evidenced by the following:

. . . and the Court after first advising the defendant of the legal and constitutional rights, and further being satisfied that the defendant knowingly, freely, voluntarily, and intelligently entered a plea of guilty herein, with full understanding of the nature of the crime charged, the maximum punishment for such crime, and otherwise understood the consequences of the guilty plea, did accept the defendant's guilty plea. . . .

(Record p. 115, Amended Sentencing Order) (*emphasis added*).

THE COURT: All right. The court finds now that all of your pleas have been given freely and voluntarily, with a full understanding of your constitutional rights and the consequences of your guilty pleas. . . .

(Transcript p. 16). The State is not aware of any authority which requires that the court verbalize certain words in order for a guilty plea to be accepted. There is no doubt from the record that the trial court accepted the plea.

III. THE APPELLANT DID NOT RECEIVE INEFFECTIVE ASSISTANCE OF COUNSEL.

The Appellant also argues that he did not receive effective assistance of counsel. (Appellant's Brief p. 20). The trial court rendered the following holding on this particular claim in its Order denying the Appellant's Motion for Post Conviction Relief:

Williams has produced no evidence, other than his sworn affidavit, to support this claim. Additionally, Williams stated at the plea hearing that he was satisfied with the

services of his attorney. Williams has failed to satisfy either prong of *Strickland*, therefore this issue is without merit.

(Record p. 276). This Court recently stated the following with regard to ineffective assistance of counsel claims:

To prove ineffective assistance of counsel, a defendant must show that: (1) counsel's performance was deficient, and (2) this deficiency prejudiced the defendant. *Strickland v. Washington*, 466 US 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). The burden of proof rests with the defendant to show both prongs. *McQuarter v. State*, 574 So.2d 685, 687 (Miss. 1990). Under *Strickland*, there is a strong presumption that counsel's performance was effective. *Strickland*, 666 US at 689, 104 S.Ct. 2052. To overcome this presumption, "the defendant must show that there is a reasonable probability that, but for the counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694, 104 S.Ct. 2052.

Cherry v. State, 24 So.3d 1048, 1051 (Miss. Ct. App. 2010). The Appellant failed to meet this burden.

First and foremost, Mississippi law is clear that "[i]n cases involving post-conviction collateral relief, 'where a party offers only his affidavit, then his ineffective assistance claim is without merit.'" *Id.* (quoting *Vielee v. State*, 653 So.2d 920, 922 (Miss. 1995)). Here the Appellant offers only his affidavit to support his claim of ineffectiveness. While the Appellant does list several alleged deficiencies in his brief, he offers only vague assertions to support them.

Secondly, the Appellant wholly fails to establish the second prong of *Strickland*. With regard to this prong, the Appellant only asserts that "[t]hose deficiencies severely prejudiced Mr. Williams's rights. But for the deficiencies of counsel, the result in Mr. Williams's case would have been vastly different." (Appellant's Brief p. 22). A blanket assertion that the outcome would have been different but for counsel's representation, without explanation, is simply not enough to meet the above referenced standard.

Finally, the Appellant's claims on appeal are in direct conflict with his statements during the

plea hearing. During his plea hearing, the Appellant confirmed that he was fully satisfied with the services of his attorney. (Transcript p. 10). "Trial judges are entitled to place great weight upon a defendant's initial plea under oath." *Green v. State*, 880 So.2d 377, 381 (Miss. Ct. App. 2004) (quoting *Templeton v. State*, 725 So.2d 764 (Miss. 1998)). Additionally, "[i]t has long been held that 'solemn declarations in open court carry a strong presumption of verity.'" *Simoneaux v. State*, 29 So.3d 26, 34 (Miss. Ct. App. 2009) (quoting *Baker v. State*, 358 So.2d 401, 403 (Miss. 1978)).

Accordingly, the Appellant failed to meet the requirements of *Strickland*. Additionally, the record clearly indicates that the Appellant was satisfied with his counsel's representation of him at the plea hearing.

CONCLUSION

For the foregoing reasons, the State of Mississippi respectfully requests that this Honorable Court affirm the trial court's dismissal of the Appellant's Motion for Post Conviction Relief.

Respectfully submitted,

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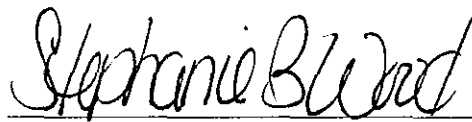
I, Stephanie B. Wood, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

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