

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

**WILLIE RAY LAY**

**APPELLANT**

**VS.**

**NO. 2010-CP-0633**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR THE APPELLEE**

**APPELLEE DOES NOT REQUEST ORAL ARGUMENT**

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**STATEMENT OF ISSUES**

- I. LAY'S MOTION FOR POST-CONVICTION RELIEF WAS PROPERLY DISMISSED AS TIME-BARRED.**

**STATEMENT OF FACTS**

Willie Ray Lay was indicted for capital murder on January 27, 2000. C.P. 25. In March of that same year Lay pleaded guilty to simple murder and burglary of a dwelling. C.P. 29-30. On May 4, 2009, Lay filed a motion for post-conviction relief in the trial court. C.P. 2-24. The motion was dismissed as time-barred. C.P. 33-34.

## **SUMMARY OF ARGUMENT**

Lay's motion for post-conviction relief was properly dismissed as time-barred because he failed to file his motion within three years of the entry of his judgment of conviction. Lay fails to meet any exception to the time-bar.

## ARGUMENT

A defendant who enters a plea of guilty has three years from the entry of the judgement of conviction to file a motion for post-conviction relief. Miss. Code Ann. § 99-39-5(2). Lay's motion for post-conviction relief was properly dismissed as time-barred as it was filed well outside the three-year statute of limitations. Lay claims that he is serving an illegal sentence, and if such a claim were true, Lay's motion would be excepted from the three year time-bar. *Sneed v. State*, 722 So.2d 1255, 1257 (¶ 11) (Miss.1998). However, Lay's illegal sentence claim is without merit, and Lay meets no other exception to the time bar.

Lay alleges that his convictions and sentences for murder and burglary violate the constitutional prohibition against double jeopardy. In dismissing Lay's motion for post-conviction relief, the trial court correctly found that although Lay was indicted for capital murder with the underlying crime of armed robbery, his convictions, pursuant to the entry of a valid guilty plea, for simple murder and burglary did not amount to multiple punishments for the same offense because murder does not require an underlying felony. C.P. 33. Both this Court and the Mississippi Supreme Court have found that a defendant's Fifth Amendment right against double jeopardy is not violated where a defendant who is indicted for capital murder pleads guilty to murder and the underlying felony alleged in the indictment. *Stephens v. State*, 739 So.2d 413, 414-15 (¶¶5-8) (Miss. Ct. App. 1999); *Kincaid v. State*, 711 So.2d 873, 877 (¶18) (Miss. 1998). Accordingly, Lay's double jeopardy argument is without merit.

Lay also claims that his guilty plea was not knowingly, voluntarily, and intelligently given. Lay claims that this is so because he was allowed to plead guilty to charges for which he was not indicted. However, it is entirely permissible to allow a defendant who has been indicted for a greater offense to enter of plea of guilty to a lesser or related offense. *Young v. State*, 797 So.2d 239, 242

(¶5) (Miss. Ct. App. 2001); U.R.C.C.C.P. 8.04(B)(2).

Lay's ineffective assistance of counsel claim necessarily fails because he presents nothing more than his own bare assertions to support his claim. Claims of ineffective assistance of counsel in the post-conviction relief arena are automatically deemed to be without merit when they are supported only by the defendant's own affidavit. *Vielee v. State*, 653 So.2d 920, 922 (Miss. 1995). Additionally, Lay's claim of ineffective assistance is without merit because he claims that defense counsel was ineffective for allowing him to plead guilty to two charges for which he was not indicted. However, as the State has shown, such is entirely permissible.

Because Lay fails to meet any exception to the three year time-bar, the trial court properly dismissed Lay's motion for post-conviction relief.

## CONCLUSION

For the foregoing reasons, the State asks this honorable Court to affirm the trial court's dismissal of Lay's motion for post-conviction relief.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I, LaDonna C. Holland, 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 Marcus D. Gordon  
Circuit Court Judge  
P. O. Drawer 220  
Decatur, MS 39327

Honorable Mark Duncan  
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Willie Ray Lay, #K1877  
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This the 22nd day of October, 2010.



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