

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

DEMETRIUS MCNUTT

APPELLANT

VS.

NO. 2010-CP-0788

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

JIM HOOD, ATTORNEY GENERAL

**BY: LAURA H. TEDDER
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 Issues	1
Statement of the Case	2
Summary of the Argument	3
Argument	4
I. McNutt received constitutionally effective assistance of counsel	4
II. McNutt entered a knowing and intelligent guilty plea	5
Conclusion	7
Certificate of Service	8

STATEMENT OF THE ISSUES

- I. McNutt received constitutionally effective assistance of counsel.
- II. McNutt entered a knowing and intelligent guilty plea.

STATEMENT OF THE CASE

On or about April 13, 2008, Demetrius McNutt and Christopher Lamar Coleman were charged with capital murder of Brent Jackson in the course and commission of the felony of robbery. (Tr. 7) On April 28, 2009, McNutt entered a plea of guilty in the Jackson County Circuit Court. (Tr. 14) On March 22, 2010, McNutt filed a Motion for Post Conviction Relief in the trial court. (C.P. 2) On April 16, 2010, the trial judge denied McNutt's Motion for Post-Conviction Relief. (C.P. 22) On May 12, 2010, McNutt filed his Notice of Appeal of the denial of his Motion for Post-Conviction Relief.

SUMMARY OF THE ARGUMENT

McNutt received constitutionally effective assistance of counsel. McNutt fails to show how his counsel was deficient and how this prejudiced his defense. The record does not support any of his allegations of incompetence. The guilty plea petition and transcript of the plea hearing show counsel was competent and gave “reasonable professional assistance” during all stages of the proceedings. Further, McNutt did not submit affidavits supporting his allegations, but only offered bare assertions of ineffectiveness, which is insufficient. At the plea hearing, McNutt testified that he had discussed his case with his lawyer and was satisfied with his advice. He admitted guilt on the record. McNutt also signed a sworn oath-his petition to enter a plea of guilty-which stated his lawyer had fully informed him on all matters of his case (including the nature of the charges and possible defenses; counsel did not threaten or induce him to enter a plea; and he was satisfied with his counsel's advice). “Great weight is given to statements made under oath and in open court during sentencing.” *Ward v. State*, 879 So.2d 452, 455 (Miss.Ct.App.2003) (quoting *Gable v. State*, 748 So.2d 703, 706 (Miss.1999)). There is no merit to the Appellant’s argument. Moreover, “the trial court may dismiss a motion for post-conviction relief if the petitioner fails to submit affidavits in support of his allegations” of ineffective assistance; petitioner's bare assertions are insufficient. *Mayhan v. State*, 26 So.3d 1072, 1076 (Miss.Ct.App.2009).

McNutt entered a knowing and intelligent guilty plea. McNutt alleges that his guilty plea was not knowing and intelligent and that there was no factual basis for the conviction established at the plea hearing. However, the record reflects that a factual basis was established. (Tr. 7-8) The trial court correctly accepted McNutt’s plea at the guilty plea hearing and correctly dismissed

McNutt's Motion for Post-Conviction Relief which is the subject of this appeal.

ARGUMENT

I. McNutt received constitutionally effective assistance of counsel.

In order to prove ineffective assistance of counsel, the defendant must show: (1) counsel's performance was deficient, and (2) this deficiency prejudiced the defense. *Liddell v. State*, 7 So.3d 217, 219 (Miss.2009) (quoting *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)). “[A] court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance....” *Id.* (quoting *Strickland*, 466 U.S. at 689, 104 S.Ct. 2052.) In the context of guilty pleas, the defendant must show “unprofessional errors of substantial gravity” and show “that the deficient conduct proximately resulted in his guilty plea, and but for counsel's errors, he would not have entered the plea.” *Cole v. State*, 918 So.2d 890, 894 (Miss.Ct.App.2006) (citing *Reynolds v. State*, 521 So.2d 914, 918 (Miss.1988)). The defendant must allege facts of ineffective assistance with “specificity and detail.” *Kinney v. State*, 737 So.2d 1038, 1041 (Miss.Ct.App.1999) (citing *Cole v. State*, 666 So.2d 767, 777 (Miss.1995)). Moreover, “the trial court may dismiss a motion for post-conviction relief if the petitioner fails to submit affidavits in support of his allegations” of ineffective assistance; petitioner's bare assertions are insufficient. *Mayhan v. State*, 26 So.3d 1072, 1076 (Miss.Ct.App.2009).

McNutt fails to show how his counsel was deficient and how this prejudiced his defense. The record does not support any of his allegations of incompetence. The guilty plea petition and transcript of the plea hearing show counsel was competent and gave “reasonable professional assistance” during all stages of the proceedings. Further, McNutt did not submit affidavits

supporting his allegations, but only offered bare assertions of ineffectiveness, which is insufficient. At the plea hearing, McNutt testified that he had discussed his case with his lawyer and was satisfied with his advice. He admitted guilt on the record. McNutt also signed a sworn oath-his petition to enter a plea of guilty-which stated his lawyer had fully informed him on all matters of his case (including the nature of the charges and possible defenses; counsel did not threaten or induce him to enter a plea; and he was satisfied with his counsel's advice). "Great weight is given to statements made under oath and in open court during sentencing." *Ward v. State*, 879 So.2d 452, 455 (Miss.Ct.App.2003) (quoting *Gable v. State*, 748 So.2d 703, 706 (Miss.1999)). There is no merit to this argument.

II. McNutt entered a knowing and intelligent guilty plea.

There is no merit to McNutt's claim that his guilty plea was not knowingly and intelligently entered. As the Mississippi Supreme Court has stated:

A guilty plea will be found valid if it is shown to have been voluntarily and intelligently made by the criminal defendant before the trial court. *King v. State*, 738 So.2d 240, 241 [(2-3)] (Miss.1999). To determine whether the plea is voluntarily and intelligently given, the trial court must advise the defendant of his rights, the nature of the charge against him, as well as the consequences of the plea. *Harris v. State*, 806 So.2d 1127, 1130 [(9)] (Miss.2002).

Burrough v. State, 9 So.3d 368, 373(11) (Miss.2009).

The transcript of McNutt's plea colloquy shows that McNutt was informed of the minimum and maximum sentence that he might receive as well as all the rights and procedures that he would be entitled to if chose to proceed to trial. McNutt indicated that he and his counsel had discussed his case and that he was pleased with the advice he received. During the colloquy, McNutt was informed of the charge against him and of the factual basis for the charge. McNutt

indicated that he was sufficiently educated, that he was not under the influence of any drugs or alcohol, and that he still wished to plead guilty. Under these circumstances, it is clear that McNutt's guilty plea was voluntarily and intelligently made.

McNutt alleges that his guilty plea was not knowing and intelligent and that there was no factual basis for the conviction established at the plea hearing. However, the record reflects that a factual basis was established, as follows:

The Court: I'll ask the assistant DA to explain to each of you what you're attempting to plead guilty to. Explain the charge Mr. McNutt is attempting to plead guilty to.

Mr. Nochel: Your Honor, in 2008-10, 838, Demetrius James – Liljames – McNutt and Christopher Lamar Coleman are charged with capital murder in Jackson County, Mississippi, on or about April 13, 2008. They killed Brent Jackson in the course and commission of the felony robbery. In that case, Judge, the facts are that Mr. McNutt and Mr. Coleman had set up a robbery of Brent Jackson. And during the course of that robbery, Mr. McNutt shot Brent Jackson and killed him. They then too his car, sold it or disposed of it, took some other property from the car. And that's pretty much it.

(Tr. 7-8)

The trial judge asked McNutt why he thought he was guilty and what he did. McNutt then gave a detailed account of the planning of the robbery, the robbery itself, the murder and the flight from the scene in the victim's car and the subsequent disposal of the victim's car. (Tr. 14-

18) Before it may accept a guilty plea, the circuit court have before it substantial evidence that the accused did commit the legally defined offense to which he is offering the plea. *Corley v. State*, 585 So.2d 765, 767 (Miss.1991)). Ultimately, enough facts must have been presented to convince the circuit court that “the prosecution could prove the accused guilty of the crime charged.” *Id.*

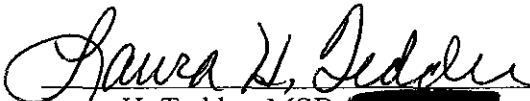

It is abundantly clear that the trial court heard substantial evidence that McNutt did commit the felony robbery and murder with which he was charged. This issue is without merit and the trial court’s dismissal of McNutt’s Motion for Post-Conviction Relief should be affirmed.

CONCLUSION

The assignments of error presented by the Appellant are without merit and the trial court’s denial of McNutt’s Motion for Post-Conviction Relief should be affirmed.

Respectfully submitted,

**JIM HOOD, ATTORNEY GENERAL
STATE OF MISSISSIPPI**

By: 
Laura H. Tedder, MSB 
Special Assistant Attorney General

Office of the Attorney General
Post Office Box 220
Jackson, Mississippi 39205-0220
Telephone: (601)359-3680

CERTIFICATE OF SERVICE

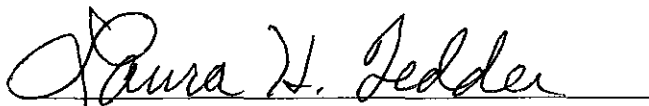
I, Laura H. Tedder, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

Honorable Kathy King Jackson
Circuit Court Judge
Post Office Box 998
Pascagoula, MS 39568-0998

Honorable Anthony Lawrence, III
District Attorney
Post Office Box 1756
Pascagoula, MS 39568

Demetrius McNutt, #148752
Wilkinson County Correctional Facility (W.C.C.F.)
Post Office Box 1079
Woodville, Mississippi 39669

This the 1st day of April, 2011.


LAURA H. TEDDER
SPECIAL ASSISTANT ATTORNEY GENERAL

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