

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

LAWRENCE F. WILLIS

APPELLANT

VS.

NO. 2010-CP-1257

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

LAWRENCE WILLIS

APPELLANT

VERSUS

NO. 2010-CP-1257

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR APPELLEE

STATEMENT OF THE CASE

This case involves an appeal from the Circuit Court of Lauderdale County, wherein Lawrence F. Willis pleaded guilty to a charge of possession of cocaine with intent to sell and was sentenced to a term of 25 years in the custody of the Mississippi Department of Corrections. Thereafter, Willis filed in the circuit court a Motion for Post-Conviction Collateral Relief, which was summarily denied. (C.P.54-60) Aggrieved by the judgment rendered against him, Willis has perfected an appeal to this Court.

SUMMARY OF THE ARGUMENT

The circuit court properly found that Willis's motion for post-conviction collateral relief was plainly devoid of merit. The judgment entered below should be affirmed.

PROPOSITION:

**WILLIS'S MOTION FOR POST-CONVICTION COLLATERAL RELIEF
WAS PROPERLY DISMISSED WITHOUT A HEARING**

Having examined Willis's motion, along with the court files, records, and transcripts, found that it plainly appeared that Willis was not entitled to any relief. The court painstakingly analyzed each of Willis's claims and found them to be without merit.¹ In its order, appended to this brief as Exhibit A, the court cited the quoted the transcript of the plea colloquy and quoted controlling case law. The state incorporates those authorities by reference. (C.P.54-60)

The court's denial of relief "will not be reversed absent a finding" that it "was clearly erroneous." *King v. State*, 929 So.2d 373, 374 (Miss. App. 2006). Here, the court's findings are supported by "unimpeachable documentary evidence." By no stretch of the imagination are they "clearly erroneous." *Gable v. State*, 748 So.2d 703, 705-06 (Miss.1999). The circuit court's judgment should be affirmed.

¹No other claims are properly before this Court. *Rivers v. State*, 807 So.2d 1280, 1281 (Miss. App. 2002); *Patterson v. State*, 594 So.2d 606, 609 (Miss.1992); *Gardner v. State*, 531 So.2d 805, 808-09 (Miss.1988).

CONCLUSION

The state respectfully submits Willis's motion for post-conviction collateral relief was properly dismissed without a hearing. The judgment entered below should be affirmed.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

BY:



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CERTIFICATE OF SERVICE

I, Deirdre McCrory, 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 Robert W. Bailey
Circuit Court Judge
P. O. Box 1167
Meridian, MS 39302

Honorable E. J. (Bilbo) Mitchell
District Attorney
P. O. Box 5172
Meridian, MS 39302-5127

Lawrence F. Willis, #49731
South Mississippi Correctional Institution (S.M.C.I.)
Post Office Box 1419
Leakesville, Mississippi 39451

This the 7th day of January, 2011.


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IN THE CIRCUIT COURT OF LAUDERDALE COUNTY, MISSISSIPPI

LAWRENCE WILLIS

2010 JUL 21 PM 2:29

PETITIONER

VS.

Donna J. Gentry

CIRCUIT CLERK

CAUSE NO.: 07-CV-010(B)

STATE OF MISSISSIPPI

RESPONDENT

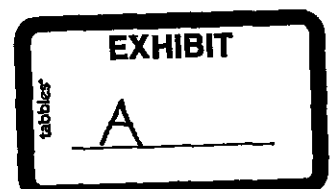
**JUDGMENT DENYING MOTION FOR
POST CONVICTION COLLATERAL RELIEF**

THIS cause having come before this Court a Motion for Post Conviction Collateral Relief filed by the Petitioner *pro se* in this cause, and the Court having considered the motion, the entire record and applicable authority, hereby finds the following, to wit:

FACTS

On April 28, 2004, the Petitioner entered his plea of guilty to the charge of possession of cocaine with intent to sell, as a habitual offender, in the Lauderdale County Circuit Court Cause No. 290-03. On June 3, 2004, this Court sentenced the Petitioner to serve twenty-five (25) years in the custody of the Mississippi Department of Corrections as a habitual offender without probation, parole, earned time or good time credit and without suspension or reduction under Miss. Code Ann. § 99-19-81.

The Petitioner filed this Motion for Post Conviction Collateral Relief on January 23, 2007, claiming that he is innocent and asserting that there was no factual basis for the Court to except his guilty plea. The Petitioner cites Miss. Code Ann. § 99-39-5(a), (b), (e), (f) and (h). The Petitioner asserts that the Court was without jurisdiction to impose sentence, there exists evidence of material facts not previously presented and heard, his plea was involuntary, and that he is entitled to an out-of time appeal. The Petitioner fails to present any affidavits or other evidence in support of any of his claims.



FINDINGS

The Court is of the opinion that the Petitioner has alleged essentially every argument he could extract from the statute in a “shotgun” approach, in hopes that the Court would accept his use of the statutory language and key phrases as legitimate grounds for relief without requiring real evidence to support his claims. If it plainly appears from the face of the post conviction motion, exhibits and the prior proceedings that the petitioner is not entitled to any relief, the Court is authorized to summarily dismiss the motion and cause the petitioner to be notified. Miss. Code. Ann. § 99-39-1(2), *Thompson v. State*, 990 So.2d 265, 269 (Miss. Ct. App. 2008).

The plea colloquy demonstrates that a sufficient factual basis for the Court to accept the Petitioner’s guilty plea, and that the Petitioner understood the consequences of entering his guilty plea.

Q: All right. You have been indicted in your case, Mr. Willis, on a charge of possession of cocaine with intent, both as a habitual offender, under Section 99-19-81, and under the enhanced statute, 41-29-147. Do you understand that if convicted of that felony under the enhanced statute and as a habitual offender, you could be sentenced to serve up to 60 years with the Mississippi Department of Corrections and that would be served day-for-day without the possibility of any type of early release consideration and you also could be fined not less than five thousand dollars no more than a million dollars? Do you understand that?

A: Yes, sir.

Q: And it is your desire to plead guilty to that charge, that is, possession of cocaine with intent under the habitual offender statute but not under the enhanced statute; is that correct?

A: Yes, sir.

Q: All right. Do you understand that possession of cocaine with intent to distribute under the habitual offender statute carries a penalty of from 0 to 30 years with the Mississippi Department of Corrects and any sentence that you would serve would be served day-for-day without the possibility of any type of early release consideration? Do you understand that?

A: Yes, sir.

Transcript, pp. 4 – 5.

Q: Are you satisfied with the services rendered to you and on your behalf by your attorney?

A: Yes, sir.

Q: Do you feel like your attorney has done all that any attorney could do in representing you and defending you in your case?

A: Yes, sir.

Q: Even though your trials are set this morning and the jury is downstairs waiting on us, other than that, has any – do you feel like anyone is putting pressure on you to make you plead guilty this morning?

A: No, sir.

Q: Do you feel like anyone is tricking you or manipulating you in any way to make you plead guilty this morning?

A: No, sir.

Transcript, pp. 6 – 7.

Q: All right. Have you read the petition to plead guilty that you have filed in

your court file?

A: Yes, sir.

Q: Have you gone over your petition with your attorney paragraph by paragraph?

A: Yes, sir.

Q: Did your attorney explain each paragraph to you and answer any questions that might have had?

A: Yes, sir.

Q: So if I understand what you are telling the Court, you are entering your plea of guilty freely, voluntarily and knowingly with a full understanding of all matters that are set forth not only in your indictment that charges you with your felony, but in your petition to plead guilty as well; is that correct?

A: Yes, sir.

Transcript, pp. 7 – 8.

Q: Mr. Willis, you have pled guilty to possession of cocaine with intent under the habitual offender statute. I will accept your guilty plea, adjudicate you to be guilty. I will set a sentencing hearing for June 3, 3004 at 2:30. I will order a Presentence Investigative Report be prepared on you and your background. At that sentencing hearing, you, followed by - - I mean the State, followed by yourself, will have a right to call any witnesses, put on any testimony that you feel like are relevant to the Court at a sentencing hearing. Once each side has rested, I will give each side an opportunity to make a statement as to what they feel like would be an appropriate sentence for you. Then, it would be up to the Court to sentence you to serve anywhere from 0 to 30 years with the Mississippi Department of Corrections, and you would be sentenced, like I said,

as a habitual offender; that is, whatever time the Court gave you would be served day-for-day without the possibility of any type of early release consideration. Your other indictment, case number 291-03, which is another possession of cocaine with intent, that indictment will be nolle prosequi, which means dismissed, by separate order.

Now, is that your understanding of the full and complete plea bargain agreement that you have – well, is that your understanding of what you are doing this morning? Not that it's a plea agreement, but is that your understanding of what you are doing this morning?

A: Yes, sir.

Transcript, pp. 10 – 11.

Q: Other than your agreement that I just went over with you that dealt with your sentencing hearing, has any law officer or agent of any branch of the government either told you or inferred to you that you would come out better pleading guilty rather than go to trial in order to put pressure on you to make you plead guilty this morning?

A: No, sir.

Q: Do you understand that by pleading guilty you are giving up your right to appeal on any issue concerning the charges in your indictment? Do you understand that?

A: Yes, sir.

Q: All right. Now, Paragraph 16 states your involvement in your felony. Mr. Willis, you state that: On or about August 7, 2002, I did willfully and unlawfully possess about 17.32 grams of cocaine, a Schedule II controlled substance, which I intended to distribute to others, and that this occurred here in Lauderdale County, Mississippi.

Now, is that accurate?

A: Yes, sir.

Transcript, pp. 15 – 16.

By the Court: All, right. The Court finds that, after questioning [the Defendant] under oath, observing [him], and listening to [his] answers to the Court's questions, that [he] has intelligently, voluntarily, and knowingly not only waived the constitutional guarantees associated with a trial that are set out in Paragraph 5 of the sworn petition, but in entering [his plea] of guilty.

The Court will accept [his] guilty plea. I will adjudicate [the Defendant] to be guilty. [He is] pleading guilty in the blind. I have gone over that with [the Defendant] on the record in detail, explained how the sentencing hearing works. And [the Defendant], along with [his] attorney, and Ms. Lisa Howell, the District Attorney, all acknowledge that that is their understanding.

. . . [T]he Court further finds that [the Defendant] fully understands the felony to which [he] is pleading guilty to this morning, [he] understands how the felony relates to [his] factual situation, [he] understands the essential elements that make up the felony and the minimum and maximum penalties that the felony carries.

Mr. Willis is pleading as a habitual offender, and I have explained to him how that sentence would work, and he understands that.

The Court further finds that there is a factual basis to support [the Defendant's] guilty plea and [he] has received effective assistance of counsel and the jail-time credit is accurate.

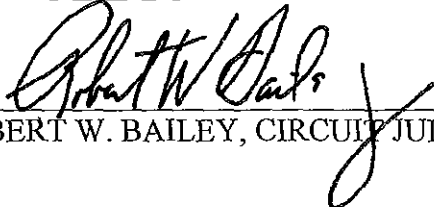
Transcript, p. 21.

The record clearly reflects a adequate factual basis for the Petitioner's guilty plea. See

generally *Davis v. State*, 973 So.2d 1040 (Miss. Ct. App. 2008), *Turner v. State*, 961 So.2d 734, 737 (Miss. Ct. App. 2007) (An adequate factual basis for the plea may be formed by any record evidence before the court, including the defendant's admission of guilt.). The Defendant was fully informed of the effects of entering his guilty plea, and he demonstrated a complete understanding on the consequences of his guilty plea. The Court finds that the Petitioner has failed to produce any evidence in support of his broad allegations that there was no factual basis for his guilty plea, and his motion is therefore, without merit. See *Mayhan v. State*, 26 So.3d 1072 (Miss. Ct. App. 2010).

IT IS THEREFORE ORDERED AND ADJUDGED, that the Motion for Post Conviction Collateral Relief is without merit and is hereby dismissed. The law clerk shall mail a copy of the Judgment to the Petitioner, Lawrence Floyd Willis, #49731, S.M.C.I., P.O. Box 1419, Leakesville, MS 39451, and to Hon. E.J. "Bilbo" Mitchell, District Attorney, P.O. Box 5172, Meridian, MS 39302.

SO ORDERED AND ADJUGDED, this the 21st day of June, 2010.



ROBERT W. BAILEY, CIRCUIT JUDGE