IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

JERRY TYRONE PARKER — APPELLANT

VS. — NO. 2010-CP-1882-SCT

STATE OF MISSISSIPPI — APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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VS. **NO. 2010-CP-1882-SCT**

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BRIEF FOR THE APPELLEE

STATEMENT OF THE CASE

JERRY TYRONE PARKER seeks appellate review of summary denial of his "Motion to Withdraw Guilty Plea" filed on September 28, 2010, exactly one year after entering "best interest" (R. 7; C.P. at 15) pleas of guilty on September 28, 2009, to the sale of methamphetamine within 1,500' of a church (Count I) and conspiracy to sell methamphetamine (Count II). (C.P. at 84; appellee's exhibit A, attached)

Parker assails the voluntariness of his guilty pleas, the partiality of the sentencing judge, and the effectiveness of his lawyer. Parker also claims he is innocent of the charges based upon the affidavit of his co-indictee who swore that Parker, although present, had no knowledge of the transaction and was not involved in the sale.

It is enough to say the circuit judge, although reciting the wrong reason for summarily denying post-conviction relief, reached the right result. Therefore, summary denial was both prudent and proper. Parker's arguments fail because upon entering his guilty pleas, Parker waived his right to any defenses he may have had to the charges, including his claim he had no prior knowledge of the sale

allegedly instigated solely by his co-indictee, Dante Reed. Reed's affidavit fails to qualify as newly discovered evidence warranting post-conviction relief.

Moreover, Parker's allegations targeting involuntary pleas, partiality of the circuit judge, and effectiveness of his attorney were materially contradicted by the record, including his informative petition to enter plea of guilty (C.P. at 13-21) as well as the plea-qualification hearing itself. (R. 1-11)

It has been said time and again that "[s]olemn declarations in open court carry a strong presumption of verity." **Baker v. State,** 358 So.2d 401, 403 (Miss. 1978).

STATEMENT OF FACTS

Jerry Tyrone Parker is a thirty-eight (38) year old African-American male and prior convicted felon. (C.P. at 13, 16, 22) He has completed eleven (11) years of school and can both read and write. (R. 3; C.P. at 9)

On September 28, 2009, Parker, by all appearances, entered voluntary and intelligent "best interest" pleas of guilty in the Circuit Court of Rankin County, Samac S. Richardson, Circuit Judge, presiding, to the sale of methamphetamine within 1,500' of a church (Count I) and conspiracy to sell methamphetamine (Count II).

Parker, pursuant to a plea bargain agreement (R. 7), was sentenced to serve twenty (20) years in the custody of the MDOC on Count I and twenty (20) years on Count II, to run consecutive with count I, provided however, that "after the defendant has served a term of one (1) day [o]n count I in the custody of the MDOC, the Defendant shall be released and placed on supervised post release supervision in Count I under the direct supervision of the Mississippi Department of Corrections on the terms, provisions and conditions prescribed elsewhere in this Order." (C.P. at 25)

On September 28, 2010, exactly one year to the day following his seemingly voluntary and intelligent pleas of guilty, Parker filed a motion to withdraw his guilty plea(s) claiming they were

involuntary because (1) the judge threatened him with a lengthy sentence and coerced him into accepting the State's bargain; (2) his lawyer was ineffective in the constitutional sense in that he " . . . stood moot (silence) throughout the proceeding;" and (3) Parker's co-indictee, Dontae Reed, had exonerated Parker by telling the arresting officers that Parker had no foreknowledge of the sale of meth by Reed. (C.P. at 40-50)

Parker filed in support of his motion to withdraw an eleven (11) page brief (C.P. at 51-61) as well as a twenty-one (21) page supporting memorandum of law. (C.P. at 63-83)

Parker requested, *inter alia*, recusal of an allegedly biased judge, an evidentiary hearing in the lower court to resolve the issues, and vacation of his plea(s). (C.P. at 60)

Circuit Judge Samac Richardson, in a two page order, summarily denied the requested relief for the reason that "[t]he Movant is apparently attempting to appeal his plea of guilty." (C.P. at 84; appellee's exhibit A, attached)

Specifically, Judge Richardson found ". . . that there is no appeal from a plea of guilty pursuant to §99-35-101 MCA and that if the Movant wishes to seek some form of redress, he should file a Motion for Post-Conviction Relief according to §99-39-1 MCA *et seq.*" (C.P. at 84-85; appellee's exhibit A, attached)

Parker has filed two separate briefs in this appeal, one consisting of 30 pages titled "Appeal" with an attached certificate of service dated November 11, 2010, and the second a 31 page dossier titled "Brief of Appellant" with a certificate of service dated January 26, 2011.

Parker, within the context of allegedly ineffective counsel representing him during his guilty pleas, raises several rather loosely identifiable issues.

1. His pleas were involuntary because Judge Richardson, who entertained Parker's pleas, threatened him with a lengthy sentence if Parker refused to accept the State's plea bargain. ("Appeal"

at pp 2-3; "Brief of Appellant" at 1)

2. There is newly discovered evidence in the form of a co-indictee's affidavit swearing that Parker was ignorant of a sale going down, thus establishing his innocence and rendering Parker's pleas unenforceable and invalid as a matter of law. ("Appeal" at pp 2-3; "Brief of Appellant" at 1)

Parker's sworn "Petition to Enter Guilty Plea" is a matter of record at C.P. 13-21. It is replete with sworn acknowledgments by Parker that his pleas were voluntary and not the product of threats or coercion; that Parker was satisfied with his lawyer, and Parker was pleading guilty to the dual offenses because he was, in fact, guilty of them.

A transcript of the plea-qualification hearing conduct before Judge Richardson on September 28, 2009, is also a part of the record on appeal. (R. 1-11)

SUMMARY OF THE ARGUMENT

Judge Richardson reached the right result in summarily denying Parker's motion to vacate his guilty pleas even if he recited the wrong reason.

On appeal, the Supreme Court will affirm the decision of the lower court where the right result is reached even though the Supreme Court may disagree with the reason given for that result. **Puckett v. Stuckey,** 633 So.2d 979 (Miss. 1994). *See also* **Towner v. State,** 837 So.2d 221 (Ct.App.Miss. 2003); **Jackson v. State,** 811 So.2d 340 (Ct.App.Miss. 2000).

"The burden is upon [Parker] 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).

Parker has failed to do so here.

During the plea qualification hearing conducted on September 28, 2009, Judge Richardson,

after informing Parker of the required minimum and maximum sentence for each offense (sale of meth and conspiracy to sell meth), read and explained in plain and ordinary English the charges to Parker. (R. 6-7)

Immediately thereafter, the following colloquy took place:

> THE COURT: Did you commit this crime or crimes, Mr. Parker?
>
> A. Yes, sir.
>
> THE COURT: If you elected to go to trial in this matter, do you believe that the State could produce enough evidence at your trial that a jury would convict you of the offense or offenses to which you are pleading guilty, Mr. Parker?
>
> A. Yes, sir.
>
> THE COURT: Okay. Mr. Parker, you were selling methamphetamine. Dontae Richard Reed, was he with you when this was sold?
>
> MR. SCOTT [DEFENSE COUNSEL]: Your Honor, Mr. Parker spoke before I could speak a minute ago. This is a best interest plea.
>
> THE COURT: It would help if you could write that on the front page of the Petition.
>
> MR. SCOTT: I will, your Honor.
>
> THE COURT: Mr. Parker, are you pleading guilty because you believe that based on the evidence that the State has or would present at your trial that your chance or possibility or probability of conviction is more likely or greater than acquittal and you wish to take advantage of this plea bargain offer made by the State?
>
> A. Yes, sir. (R. 7)
>
> * * * * * *
>
> THE COURT: Is your plea of guilty freely, voluntarily made and entered, Mr. Parker?

A. Yes, sir.

THE COURT: I'm going to offer you one opportunity to withdraw your Petition to plead guilty and your case can go to trial. Do you want to withdraw your Petition to plead guilty, Mr. Parker?

A. No, sir.

THE COURT: How do you plead to the crime of s[ale] of methamphetamine and conspiracy to sell methamphetamine in Cause 20257, Count 1 and Count II, Mr. Parker?

A. Guilty , sir.

THE COURT: The court finds that the Defendant's plea or pleas of guilty are freely, voluntarily, knowingly, intelligently made and entered; further, each one has a factual basis. A judgment or judgments of conviction will be entered against you.

Do you have anything you want to say prior to imposition of sentence, Mr. Parker?

A. No, sir. (R. 8-9)

Material contradictions between what Parker says "here and now" cannot be reconciled with what Parker said "then and there."

ARGUMENT

PARKER'S CLAIM OF INVOLUNTARY PLEAS IS SUBSTANTIALLY AND MATERIALLY CONTRADICTED BY THE RECORD.

PARKER WAS NOT DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL BECAUSE COUNSEL'S PERFORMANCE WAS NEITHER DEFICIENT NOR DID ANY DEFICIENCY PREJUDICE THE DEFENDANT.

PARKER'S ALLEGED NEWLY DISCOVERED EVIDENCE WAS NOT NEWLY DISCOVERED AT ALL; RATHER, IT WAS KNOWN TO PARKER AT THE TIME OF HIS ARREST AND

WAS PATENTLY AVAILABLE TO HIM AT THE TIME OF HIS PLEAS AS WELL.

In this appeal from a denial of post-conviction relief, a prisoner, under the trustworthiness of the official oath, **(1)** swore, *inter alia*, he was satisfied with the advice and help his lawyer had given him and believed his attorney had done all that anyone could do to counsel and assist him; **(2)** swore, *inter alia*, he knew and understood the Constitution guaranteed him a whole host of named constitutional rights; **(3)** placed his initials on the blank lines indicating he had no complaints to make about his lawyer and that he waived his constitutional rights, and **(4)** swore that "[t]he decision to plead guilty was made by me alone *and I have not been forced to plead guilty by anyone.*" (C.P. at 21) [emphasis ours]

Parker, within the context of ineffective counsel and a biased judge, now claims the presiding circuit judge coerced him into accepting the State's bargain by threatening him with the maximum sentence and enhanced punishment. (C.P. at 41)

Parker also claims his lawyer was ineffective because he failed to object to the judge becoming involved with the "plea bargaining" process. (C.P. at 41-42) (Brief of the Appellant at 1)

Finally, Parker argues there is newly discovered evidence proclaiming his innocence. (Brief of Appellant at 1)

The problem with these complaints is that the newly discovered evidence is not newly discovered at all; rather, the affidavit of Parker's co-indictee that Parker says proclaims his innocence was available at the time of Parker's plea of guilty and even before that.

Moreover, the official record totally and materially contradicts all other claims.

Parker's post-conviction claim assailing the effectiveness of his lawyer is devoid of merit because counsel's performance was neither deficient nor has it been demonstrated that any deficiency

actually prejudiced Parker.

The law says that he who enters a voluntary and intelligent plea of guilty to the crime charged waives his right to all defenses he may have had to that charge. **Fairley v. State,** 834 So.2d 704 (Miss. 2003), rev and rem on other grounds; **Madden v. State,** 991 So.2d 1231, 1237 (Ct.App.Miss. 2008), quoting from **Anderson v. State,** 577 So.2d 390, 391-92 (Miss. 1991); **Goudy v. State,** 996 So.2d 185 (Ct.App.Miss. 2008); **Taylor v. State,** 766 So.2d 830 (Ct.App.Miss. 2000). *C.f.* **Johnson v. State,** 753 So.2d 449 (Ct.App.Miss. 1999)[Defendant's guilty plea waived any claim there was insufficient evidence of his constructive possession of cocaine to support an indictment.]

This includes Parker's claim of innocence via Reed's affidavit because Reed's information was available to Parker at the time of his guilty plea and even before that.

"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).

No abuse of judicial discretion has been demonstrated here where the circuit judge reached the right result even if for the wrong reason.

By entering a voluntary plea of guilty, Parker admitted all the elements of the charge and, at the same time, waived all non-jurisdictional defects incident to trial, including his right to present any defenses to the charges. **Taylor v. State,** *supra*, 766 So.2d 830, 835 (¶24) (Ct.App.Miss. 2000), citing **Anderson v. State,** 577 So.2d 390, 391 (Miss. 1991).

"The burden is upon [Parker] to prove by a preponderance of the evidence that he is entitled to the requested post-conviction relief." **Bilbo v. State,** *supra*, 881 So.2d 966, 968 (¶3) (Ct.App.Miss. 2004) citing Miss.Code Ann. §99-39-23(7) (Rev.2000). Parker 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.*

In the case at bar, the trial judge reached the right result even if for the wrong reason.

Parker has failed to make out a *prima facie* post-conviction showing he was denied the effective assistance of counsel during his guilty pleas for failing to object to Judge Richardson's alleged threats and coercion which are clearly not reflected by the record.

Counsel's performance, contrary to Parker's position, was neither deficient nor did any deficiency prejudice Parker who, although a prior convicted felon with previous convictions for burglary, manslaughter, and possession of controlled substances (C.P. at 16), was sentenced to less than the maximum. **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). It cannot be said that but for counsel's failure to do this or to do that Parker would not have entered his pleas of guilty.

Parker was advised, in plain and ordinary English, of the specific constitutional rights he was waiving. (C.P. at 14-15) Parker thereafter placed his initials in the blank spaces indicating, *inter alia*, he had no complaints to make about his lawyer, his plea(s) were voluntarily and intelligently entered, the decision to plead guilty was made by him alone, and he had not been forced to plead guilty by anyone. (C.P. at 21) These acknowledgments have got to stand for something else one will fall for anything.

"A voluntary guilty plea waives all non-jurisdictional defects in the proceedings against the defendant [and] [t]his includes claims of ineffective assistance of counsel except insofar as the ineffectiveness is alleged to have rendered the guilty plea involuntary." **United States v. Glinsey**, 209 F.3d 386 (5th Cir. 2000), reh and sugg reh denied 216 F.3d 1081, cert denied 121 S.Ct. 282, 148 L.Ed.2d 203 (2000). Such has not been alleged by Parker who has failed to sufficiently connect counsel's errors with the voluntariness of his pleas.

In **Robinson v. State,** 920 So.2d 1009, 1012 (¶10) (Ct.App.2003), the Court of Appeals held that material contradictions in the plea transcript rendered Robinson's assertions "a sham."

In his Petition to Enter Plea of Guilty Parker 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." (C.P. at 16, ¶13) [emphasis ours) There was no complaint then and there that Mr. Scott had botched the plea by failing to object to Judge Richardson's partiality or bias. That complaint has been voiced for the first time here and now on post-conviction.

In this posture, all the hullabaloo over counsel's failure to object or to do this or that is rhetoric 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,** *supra*, 812 So.2d 259, 263 (¶11) (Ct.App.Miss. 2002), citing **Richardson v. State,** *supra*, 769 So.2d 230, 235-36 (¶14) (Ct.App.Miss. 2000). Stated somewhat differently, for purposes of determination of the voluntariness of a guilty plea, declarations made under oath and in open court carry a strong presumption of verity. The Supreme 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).

This presumption has not been overcome here.

In **Taylor v. State,** *supra*, 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,** 41 So.3d 701, 708 (¶23) (Ct.App.Miss. 2009), where "Elliott's testimony at the plea hearing contradict[ed] his contentions [and] Elliott affirmed that he was 'totally satisfied' with his counsel's legal representation."

The same is equally true here.

In short, Parker 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).

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,** *supra*, 577 So.2d 390, 392 (Miss. 1991); **Dennis v. State,** 873 So.2d 1045 (Ct.App.Miss. 2004).

A valid guilty plea admits all the elements of a formal charge and operates as a waiver of all non-jurisdictional defects in a criminal case. **Edmondson v. State,** 17 So.3d 591 (Ct.App.Miss. 2009); **Swift v. State,** 6 So.3d 1108 (Ct.App.Miss. 2008), reh denied, cert denied 11 So.3d 1250 (2008), cert denied 130 S.Ct. 100 (2009).

Parker, by voluntarily pleading guilty, 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).

The trial judge accepted the recommendation made by the State that the court sentence Parker to twenty (20), twenty (20). (C.P. at 8-9)

There was no deficiency in defense counsel's performance and no prejudice to Parker.

Parker's claims are devoid of merit on their merits for the reasons expressed in **Robinson v. State,** *supra*, 920 So.2d 1009, 1012 (¶9) (Ct.App.Miss. 2003), where we find the following:

> Robinson also argues that counsel's advice to plead guilty was deficient because counsel never informed him of the elements of rape. A voluntary guilty plea requires that the defendant have knowledge of the elements of the crime with which he is charged. *Gilliard v. State*, 462 So.2d 710, 712 (Miss. 1985). **At the plea hearing, Robinson told the court that counsel had explained the nature of the charges against him and that he fully understood the charges and possible defenses. Robinson now contradicts his testimony by alleging that counsel never informed him of the elements of rape.**
>
> **This court places great emphasis on a defendant's testimony when entering a plea of guilty. "Solemn declarations in open court carry a strong presumption of verity."** *Baker v. State*, 358 So.2d 401, 403 (Miss. 1978). We find that, in the face of the evidence of the plea hearing transcript, Robinson's assertions are rendered a sham. *See Ford v. State*, 708 So.2d 73, 76 (¶¶ 16-17) (Miss. 1998). Robinson has failed to overcome the presumption that counsel's performance was reasonable.
> *Taylor v. State*, 682 So.2d 359, 363 (Miss. 1996). [emphasis ours]

We respectfully submit the same is equally true here. *See* Petition to Enter Plea of Guilty, ¶¶ 4-13, as well as the certificate of counsel. (C.P. at 19

Parker's reliance upon Reed's affidavit to suggest his innocence and the involuntariness of his pleas is misplaced. Parker's affidavits fail to satisfy the criteria for newly discovered evidence.

Carr v. State, 873 So.2d 991 (Miss. 2004); **Shelby v. State,** 402 So.2d 338, 340-41 (Miss. 1981). *See also* **Frost v. State,** 781 So.2d 155, 158 (Ct.App. Miss. 2000) ["To qualify as 'newly discovered evidence' it must be evidence which could not have been discovered by the exercise of due diligence at the time of trial, as well as being *almost certainly conclusive* that it would cause a different result."]

We respectfully submit this allegedly new evidence was available to Parker at the time of his guilty plea and even much earlier than that, *viz.*, at the time of the arrest of both Parker and Reed which presumably took place while they were inside Parker's automobile..

Finally, "[t]his Court has stated that newly discovered evidence warrants a new trial if the [new] evidence will probably produce a different result or verdict; . . ." **Ellis v. State,** 661 So.2d 177, 182 (Miss. 1995). The Court of Appeals has even said that it must be "almost certainly conclusive that it [the new evidence] would cause a different result." **Frost v. State,** *supra,* 781 So.2d 155, 158 (Ct. App. Miss. 2000). Our statute, Miss.Code Ann. §99-39-5(2)(a)(i), says the new evidence must make it "*practically conclusive* that had such been introduced at trial it would have caused a different result in the conviction or sentence." [emphasis ours]

Because this allegedly new evidence, with the exercise of due diligence, could have been discovered earlier and because the affidavit of Reed, if true, reflects that Parker was physically present inside the car at the time the sale went down, it cannot be said it is "almost certainly conclusive that [the new evidence] would cause a different plea.

CONCLUSION

The trial judge reached the right result even if he assigned the wrong reason.

Miss.Code Ann. § 99-39-11 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.*

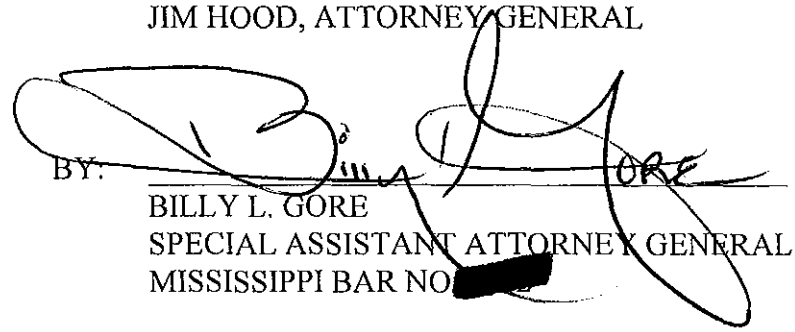
* * * * * *

It does, he did, and he was. **Falconer v. State,** 832 So.2d 622 (Ct.App.Miss. 2002) ["(W)e affirm the dismissal of Falconer's motion for post-conviction relief as manifestly without merit."].

Appellee respectfully submits this case is devoid of any claims worthy of an evidentiary hearing or vacation of the guilty pleas voluntarily and intelligently entered by Jerry Parker. Judge Richardson reached the right result even if for the wrong reason. Accordingly, the judgment entered in the lower court summarily denying Parker's motion to vacate his guilty pleas should be affirmed.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

BY: 

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IN THE CIRCUIT COURT OF RANKIN COUNTY, MISSISSIPPI

JERRY PARKER — MOVANT

vs. — CAUSE NO. 20257

STATE OF MISSISSIPPI — RESPONDENT

ORDER

Came on to be considered this day the above styled and numbered post conviction matter in which the Movant has entitled a "Motion to Withdraw Guilty Plea;" and the Court, after having reviewed the guilty plea, the plea colloquy, and the sentencing order; is of the opinion that the Motion is not well taken and that no hearing is necessary.

The Court, after thoroughly reviewing the Movant's motion and the Court's file, finds that a Judgment of Conviction and Sentence Instanter was entered on October 8, 2009, in which Movant was sentenced for the crimes of sale of methamphetamine in Count I and conspiracy to sell methamphetamine in Count II. Movant was ordered to serve twenty (20) years in Count I and twenty (20) years in Count II, in the custody of the Mississippi Department of Corrections. The sentence imposed in Count II was to run consecutively to the sentence imposed in Count I and after the Movant served a term of one (1) day in Count I, he was to be released and placed on five (5) years supervised post-release supervision in Count I. It is of this sentence Movant seeks redress.

The Movant is apparently attempting to appeal his plea of guilty. The Court finds that there is no appeal from a plea of guilty pursuant to §99-35-101 MCA and that if the Movant wishes to seek some form of redress, he should file a Motion for Post-Conviction Relief according to §99-39-1 MCA et seq.

IT IS THEREFORE ORDERED, that this motion be, and the same is hereby dismissed without the necessity of a hearing. Further, the Circuit Clerk is directed to send a copy of this Order to all parties.

SO ORDERED, this the 21ST day of October, 2010.

Circuit Judge

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 Samac Richardson
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Honorable Michael Guest
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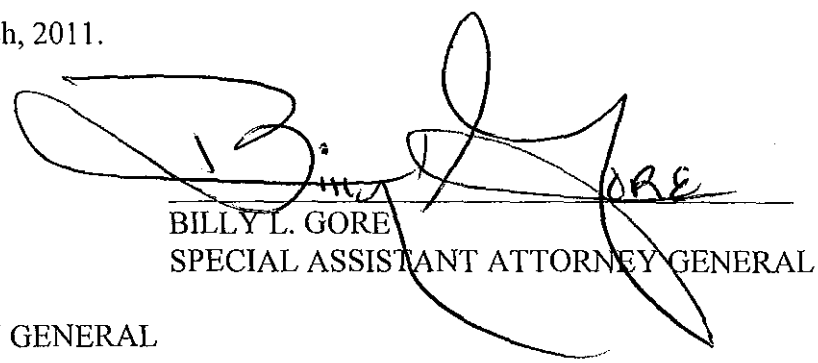
This the 1st day of March, 2011.



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