

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

**ROY DALE WALLACE**

**APPELLANT**

**VS.**

**NO. 2011-CP-0639-COA**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR THE APPELLEE**

**APPELLEE DOES NOT REQUEST ORAL ARGUMENT**

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**STATEMENT OF THE CASE**

This appeal proceeds from the summary denial of a motion for post conviction relief filed in the First Judicial District of the Circuit Court of Harrison County, Mississippi by Roy Dale Wallace. Aggrieved, Wallace appealed.

**ISSUE**

- I. Whether the trial court erred in sentencing Wallace as a habitual offender.

## **SUMMARY OF THE ARGUMENT**

The prosecution was not required to present certified copies of Wallace's previous felony convictions.

## **STATEMENT OF THE FACTS**

On July 30, 2007, Roy Dale Wallace (hereinafter "Wallace") was indicted for robbery. On December 4, 2007, the State of Mississippi filed a Motion to Amend Indictment to charge him as a previously convicted felon under Miss. Code Ann. § 99-19-81. For the previous felony convictions, the motion and order amending indictment stated that Wallace was convicted on January 22, 1987 in the Circuit Court of Cabell County, West Virginia of felony Aggravated Assault for which he was sentenced to a term of not less than one year nor more than ten years in the Virginia State Penitentiary; on March 15, 2001 in the Circuit Court of Rutherford County, Tennessee on Count I - Aggravated Robbery for which he was sentenced to ten years in the custody of the Tennessee Department of Corrections; and on March 15, 2001 in the Circuit Court of Rutherford County, Tennessee on Count II - Aggravated Robbery for which he was sentenced to ten years in the custody of the Tennessee Department of Corrections.

On December 10, 2007, the motion to amend the indictment was granted and Wallace pleaded guilty to robbery as a habitual offender under Miss. Code Ann. § 99-19-81. (CP 8-11, 40-41) The trial court sentenced him as a habitual to serve day for day in the custody of the Mississippi Department of Corrections. (CP 16).

On December 10, 2010, Wallace filed a Motion to Vacate and or Set Aside Sentence and Conviction in the Circuit Court of Harrison County. (CP 17-20). On April 8, 2011, the trial court denied the motion and stated that Wallace was a habitual offender and should have been sentenced as such. (CP 25-26). Wallace timely appealed the trial court's judgment.

## ARGUMENT

### **PROPOSITION: THE TRIAL COURT PROPERLY SENTENCED WALLACE AS A HABITUAL OFFENDER.**

An appellate court will not disturb a lower court's denial of post-conviction relief unless it is clearly erroneous. *Smith v. State*, 806 So.2d 1148, 1150(¶ 3) (Miss. Ct. App. 2002). However, when questions of law are raised, this Court's standard of review is de novo. *Brown v. State*, 731 So.2d 595, 598(¶ 6) (Miss.1999).

Wallace contends that the circuit court erred when it sentenced him as a habitual offender. He argues that the State failed to introduce certified copies of his prior convictions at the guilty plea hearing; therefore, the proof was insufficient to allow him to receive an enhanced sentence. Wallace is asking the court to resentence him as a non-habitual offender.

In support of his argument Wallace cites to *Vince v. State*, 844 So.2d 510 (Miss.Ct.App.2003) that requires proof to be put on in order to sentence someone as a habitual offender. Wallace's reliance is misplaced. In *Vince*, the defendant went to a full trial. In the case before the Court today, Wallace entered a guilty plea, therefore, a trial never occurred. In a full trial, the elements of a crime and enhancement status must be proven beyond a reasonable doubt. However, upon entry of a guilty plea, the burden of proof is not nearly as high. The trial court must have before it "enough [evidence] that the court may say with confidence the prosecution could prove the accused guilty of the crime charged[.]" *Corley v. State*, 585 So.2d 765, 767 (Miss.1991). Further, a defendant's own admission may suffice for the factual basis. *Evans v. State*, 988 So.2d 404, 405-406 (Miss. App. 2008)

This Court held in *Wilkins v. State*, 57 So.3d 19, 26 (Miss. App. 2010) "Generally, to sentence a defendant as a habitual offender, the State must prove the prior offenses by competent

evidence, and the defendant must be given a reasonable opportunity to challenge the prosecution's proof. *Madden v. State*, 991 So.2d 1231, 1236 (¶ 20) (Miss.Ct. App. 2008); See *Keyes v. State*, 549 So.2d 949, 951 (Miss.1989). However, where the defendant enters a plea of guilty and admits those facts which establish his habitual status, the State has met its burden of proof. See *Evans v. State*, 988 So. 2d 404, 405– 06 ( ¶ 10) ( Miss. App. 2008); see also *Jefferson v. State*, 556 So.2d 1016, 1019 (Miss.1989).”

During the plea colloquy, the trial court questioned Wallace about his prior convictions and made sure he understood he would have to serve his sentence day for day. (Tr. 4-5, 8). This exchange provided enough of a factual basis for the trial court to accept the guilty plea as to the enhancement charge. While the State could have presented certified copies of the judgment of convictions, it was not required. The State merely had to ensure that enough evidence was presented so the trial court could say with confidence that the State could prove that Wallace previously had been convicted of the two felonies listed in the indictment. Here, Wallace's own admissions provided such evidence. This allegation of error is without merit.

## CONCLUSION

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

Respectfully submitted,

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## CERTIFICATE OF SERVICE


I, Lisa L. Blount, 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 John C. Gargiulo  
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Roy Wallace, #135004  
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This the 6th day of September, 2011.

  
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