

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

MARQUIS T. TOWNES

APPELLANT

VS.

NO. 2011-CP-0710

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE ISSUES

- I. Townes fails to present any new evidence in this case since a plea of guilty negates any notion that there is some undiscovered evidence which could prove his innocence.
- II. Townes fails to cite any authority for his assertion that Mississippi Code Annotated § 97-3-7 (1972, as amended) is unconstitutional and therefore the claim is barred.
- III. Townes claim of self defense was available and known prior to his guilty plea.
- IV. Townes received constitutionally effective assistance of counsel and fails to satisfy either prong of *Strickland*.

STATEMENT OF THE CASE

On or about July 28, 2008, Marquis Townes pled guilty to Aggravated Assault. He was sentenced to 15 years and 117 days in the Mississippi department of Corrections, with 117 days to serve and 15 years post release supervision. He was given credit for 117 days time served. Townes was further ordered to pay restitution of \$200.00 per month for a total ordered amount of \$29,084.04. Townes was additionally sentenced to pay a fine of \$1000.00, which was suspended, and court costs. (C.P. 164) As a condition of post-release supervision, Townes was ordered to submit to drug testing twice a month. On January 29, 2010, Townes suspended sentence was revoked due to his failure to pay restitution in the amount of \$200.00 per month and for the commission of new crimes including two counts of burglary and one count of larceny. (C.P. 259-260) Ten (10) years of Townes post release supervision was revoked and Townes was sentenced to serve ten years in the custody of the Mississippi Department of Corrections. (C.P. 231)

On or about November 10, 2010, Townes filed his Motion for Post-Conviction Collateral Relief from his conviction for aggravated assault. The Circuit Court Judge dismissed Townes' Motion pursuant to Mississippi Code Annotated § 99-39-11(2). The instant appeal ensued.

SUMMARY OF THE ARGUMENT

The evidence Townes relies on to support his contention that his conviction and sentence should be overturned was available prior to Townes guilty plea. Therefore, pursuant to Mississippi Code Annotated § 99-39-11 (1972, amended), Townes is not entitled to Post-Conviction Collateral Relief. Further, "[w]hen a defendant pleads guilty, he is admitting that he committed the offense. Therefore, by definition, a plea of guilty negates any notion that there is

some undiscovered evidence which could prove his innocence.” *Jenkins v. State*, 986 So.2d 1031, 1034 (Miss.Ct.App.2008). Townes fails to cite any authority for his assertion that Mississippi Code Annotated § 97-3-7 (1972, as amended) is unconstitutional and therefore the claim is procedurally barred. “Failure to cite relevant authority obviates the appellate court's obligation to review such issues.” *Simmons v. State*, 805 So.2d 452, 487 (Miss.2001).

Townes claim that he is entitled to post-conviction collateral relief because he alleges that he was acting in self defense and now has evidence to support that claim is without merit. The evidence in question was available before Townes pled guilty and was known to the court. Further, “[w]hen a defendant pleads guilty, he is admitting that he committed the offense. Therefore, by definition, a plea of guilty negates any notion that there is some undiscovered evidence which could prove his innocence.” *Jenkins v. State*, 986 So.2d 1031, 1034 (Miss.Ct.App.2008).

Townes fails to allege or satisfy either prong of *Strickland*. Further, Townes testified at his plea hearing that he was satisfied the with the services rendered by his attorney. (C.P. 151) “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)). Furthermore, “ ‘the trial court may dismiss a motion for post-conviction relief if the [movant] fails to submit affidavits in support of his allegations' of ineffective assistance; his own bare assertions are insufficient.” *Mason v. State*, 42 So.3d 629, 633 (Miss.Ct.App.2010) (quoting *Mayhan v. State*, 26 So.3d 1072, 1076 (Miss.Ct.App.2009)). “A post-conviction-relief motion supported by the affidavit of the accused alone fails to meet the pleading requirements of Mississippi Code Annotated section 99–39–9 (Supp.2009); therefore, it ‘is deficient on its face

and properly dismissed without an evidentiary hearing.’ ” *Morris v. State*, 29 So.3d 98, 103 (Miss.Ct.App.2010) (quoting *Edwards v. State*, 995 So.2d 824, 826–27 (Miss.Ct.App.2008)).

ARGUMENT

I. Townes fails to present any new evidence in this case since a plea of guilty negates any notion that there is some undiscovered evidence which could prove his innocence.

Townes claims that he is entitled to post-conviction collateral relief due to the existence of evidence of material facts, not previously presented and heard, that require vacation of his conviction or sentence in the interest of justice pursuant to Mississippi Code Annotated § 99-39-5(1)(e) (1972, as amended). Specifically, Townes alleges that there exist written statements given by two witnesses, Ms. Pearlie Jackson and Lisa Jackson, that support a claim of self-defense in the aggravated assault to which Townes pled guilty. A petitioner seeking post-conviction relief based on new evidence must allege new evidence has been discovered since the end of trial, and such evidence could not have been discovered through due diligence before the beginning of the trial. Townes states, “I had witnesses that actually witnessed me being attacked by the three guys. Those witnesses gave written statements on my behalf. . . If those witnesses’ statements had been introduced at trial it would have caused a different result in the conviction and/or sentence.” (Appellant’s brief, C.P. 25) Townes alleges that these statements are in the Desoto County Circuit Clerk’s file. This evidence was therefore available prior to Townes guilty plea. Further, “[w]hen a defendant pleads guilty, he is admitting that he committed the offense. Therefore, by definition, a plea of guilty negates any notion that there is some undiscovered evidence which could prove his innocence.” *Jenkins v. State*, 986 So.2d

1031, 1034 (Miss.Ct.App.2008).

This issue is without merit and the rulings of the trial court should be affirmed.

II. Townes fails to cite any authority for his assertion that Mississippi Code Annotated § 97-3-7 (1972, as amended) is unconstitutional and therefore the claim is barred.

Townes offers no authority in support of this issue. “Failure to cite relevant authority obviates the appellate court's obligation to review such issues.” *Simmons v. State*, 805 So.2d 452, 487 (Miss.2001). Therefore, this issue is procedurally barred.

III. Townes claim of self defense was available and known prior to his guilty plea.

Townes alleges that his conviction is subject to collateral attack because he was acting in self defense pursuant to Mississippi Code Annotated § 97-3-7 (1972, as amended). However, during his guilty plea, Townes admitted under oath that he committed the crime of aggravated assault as set forth in the indictment and asked the trial court to accept his guilty plea. (C.P. 153) “When a defendant pleads guilty, he is admitting that he committed the offense. Therefore, by definition, a plea of guilty negates any notion that there is some undiscovered evidence which could prove his innocence.” *Jenkins v. State*, 986 So.2d 1031, 1034 (Miss.Ct.App.2008).

This issue is without merit and the trial court’s dismissal of Townes’ Motion for Post-Conviction Relief should be affirmed.

IV. Townes received constitutionally effective assistance of counsel and fails to satisfy either prong of *Strickland*.

To prove ineffective assistance of counsel, a defendant must show that: (1) his counsel's performance was deficient, and (2) this deficiency prejudiced his defense. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). The burden of proof rests

with the defendant to demonstrate both prongs. *McQuarter v. State*, 574 So.2d 685, 687 (Miss.1990). In the context of a guilty plea, “[t]he defendant claiming ineffective assistance of counsel must show, by a preponderance of the evidence, that there is a reasonable probability that had counsel's assistance been effective, he would not have pled guilty, but would have insisted on going to trial.” *Pleas v. State*, 766 So.2d 41, 43 (Miss.Ct.App.2000). Under *Strickland*, there is a strong presumption that counsel's performance falls within the range of reasonable professional assistance. *Strickland*, 466 U.S. at 689, 104 S.Ct. 2052. Townes must allege both prongs of *Strickland* with specificity and detail. *Brooks v. State*, 573 So.2d 1350, 1354 (Miss.1990).

Townes fails to allege or satisfy either prong of *Strickland*. Further, Townes testified at his plea hearing that he was satisfied with the services rendered by his attorney. (C.P. 151) “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)). Furthermore, “ ‘the trial court may dismiss a motion for post-conviction relief if the [movant] fails to submit affidavits in support of his allegations of ineffective assistance; his own bare assertions are insufficient.’ ” *Mason v. State*, 42 So.3d 629, 633 (Miss.Ct.App.2010) (quoting *Mayhan v. State*, 26 So.3d 1072, 1076 (Miss.Ct.App.2009)). “A post-conviction-relief motion supported by the affidavit of the accused alone fails to meet the pleading requirements of Mississippi Code Annotated section 99–39–9 (Supp.2009); therefore, it ‘is deficient on its face and properly dismissed without an evidentiary hearing.’ ” *Morris v. State*, 29 So.3d 98, 103 (Miss.Ct.App.2010) (quoting *Edwards v. State*, 995 So.2d 824, 826–27 (Miss.Ct.App.2008)).

“[W]here a defendant voluntarily pleads guilty to an offense, he waives all non-jurisdictional rights incident to trial[.]” *Hill v. State*, 60 So.3d 824, 827 (Miss.Ct.App.2011)

(citing *Anderson v. State*, 577 So.2d 390, 391–92 (Miss.1991)). “This ‘waiver includes all claims of ineffective assistance of counsel, except insofar as the alleged ineffectiveness relates to the voluntariness of the giving of the guilty plea.’ ” *Id.* (quoting *United States v. Cavitt*, 550 F.3d 430, 441 (5th Cir.2008)). Townes does not assert that his guilty plea was involuntary anywhere in the proceedings, therefore, Townes has waived any claim of ineffective assistance of counsel.

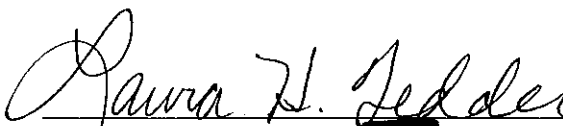

This issue is without merit and the trial court’s dismissal of Townes’ Motion for Post-Conviction Collateral Relief should be affirmed.

CONCLUSION

The issues presented by the Appellant are without merit and the trial court’s dismissal of Townes’ Motion for Post-Conviction Collateral Relief should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

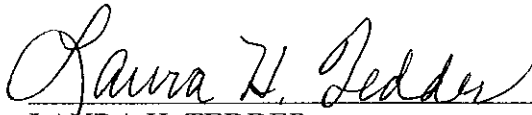
I, Laura H. Tedder, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

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This the 7th day of November, 2011.



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