

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

**RICKY SCRUGGS**

**APPELLANT**

**VS.**

**NO. 2011-CP-1260-COA**

**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**

**RICKY SCRUGGS**

**APPELLANT**

**VS.**

**NO. 2011-CP-1260-COA**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR THE APPELLEE**

**STATEMENT OF THE CASE**

Ricky Scruggs seeks appellate review of summary denial of his motion for post-conviction collateral relief filed on September 25, 2009, in the wake of a plea of guilty entered in the middle of trial on August 31, 2006, to a reduced charge of murder less than capital. (C.P. at 119, 121-142; appellee's exhibit A, attached) Scruggs was sentenced to life imprisonment. (C.P. at 119)

In a six (6) page order and opinion, Circuit Judge Robert P. Chamberlin, who presided at trial and both entertained and entered Scruggs's plea of guilty (C.P. at 121-142), summarily denied Scruggs's motion for post-conviction relief grounded, *inter alia*, on Scrugg's claim of actual innocence. *See* appellee's exhibit A, attached.

Scruggs, along with two other men, Mario Dockery and Tony Caradine, was indicted for conspiracy to commit robbery and capital murder, i.e., a killing of eighty-three (83) year old Anna Andrews while engaged in the commission of the crime of robbery.

Dockery, who also entered a plea of guilty to murder less than capital, was the first of the trio to seek post-conviction relief. Relief for Dockery, who was sentenced to life, was denied on April

5, 2011. Dockery has appealed. The State filed its appellate brief in response to Dockery's claims on July 29, 2011, in cause number 2011-CP-0643-COA.

Following Scruggs's guilty plea to the reduced charge entered in the midst of trial, Scruggs was sentenced to life imprisonment. The conspiracy count, count 1 of the joint indictment, was remanded to the files. (C.P. at 119)

On September 25, 2009, three (3) years and twenty-five (25) days following his voluntary plea of guilty, Scruggs filed a motion for post-conviction collateral relief alleging, *inter alia*, his plea was involuntary, his lawyer ineffective, his constitutional right to a speedy trial violated, his confession coerced, critical evidence withheld, and, finally, a claim of actual innocence based upon the *ex parte* affidavits of his two co-defendants who recanted their earlier confessions. (Dockery affidavit at C.P. 46-48; Caradine affidavit at C.P. 51-52) Scruggs claimed this was evidence newly discovered.

Scruggs also filed his own affidavit recanting his admission of guilt in earlier statements given to law enforcement authorities. (C.P. at 51-52)

In his six (6) page order and opinion entered on July 12, 2011, Judge Chamberlin, after requiring the State to file an Answer, summarily denied the requested relief. (C.P. at 97-102; appellee's exhibit A, attached )

Judge Chamberlin found as fact and concluded as a matter of law that Scruggs's claims targeting the denial of a speedy trial, the allegedly coerced confession, and the withholding of critical evidence from Scruggs's case were waived by Scruggs's voluntary plea of guilty.

As observed by Judge Chamberlin in his order and opinion (C.P. at 99), he also found the alleged newly discovered evidence was not newly discovered at all.

Scruggs's other claims were materially contradicted by the record, including his claim of

ineffective counsel.

As noted further by Judge Chamberlin, the State's offer of proof with respect to a factual basis for Scruggs's plea of guilty consisted of the State's evidence previously presented at trial during its case-in-chief. At the conclusion thereof the Court denied Scruggs's motion for a directed verdict thereby holding implicitly, if not directly, there was sufficient evidence to support Scruggs's conviction of capital murder. (C.P. at 121-142)

At Judge Chamberlin's request, a transcript of the colloquy taking place at Scruggs's trial during plea-qualification has been transcribed and placed in the court record. (C.P. at 121-143)

We respectfully submit, the circuit judge did not abuse his judicial discretion in finding that Scruggs could prove no set of facts in support of his claims that would entitle him to relief and that Scruggs's motion should be dismissed with prejudice.

We think it was time-barred as well.

### **STATEMENT OF FACTS**

RICKY SCRUGGS, a forty-four (44) year old African-American male with a GED who could both read and write (C.P. at 113, 120), appeals from the summary denial of his motion for post-conviction collateral relief filed on September 25, 2009, over three (3) years after his indisputably voluntary plea of guilty entered on August 31, 2006, to murder less than capital.

This is a companion appeal to Cause No. 2011-CP-0643-COA styled *Dockery v. State*, an appeal from a denial of post-conviction relief entered in the wake of Dockery's guilty plea to a reduced charge of murder.

On May 24, 2004, Scruggs, Mario Dockery, and Tony Caradine were indicted for conspiracy to commit robbery (Count 1) and capital murder, i.e., murder while engaged in the commission of the crime of robbery (Count 2). This Court may take judicial notice of the following salient facts

found in the Dockery record.

On December 30, 2003, Anna (Maxine) Andrews, an eighty-three (83) year old grandmother (Dockery record - C.P. at 133, 147), was found deceased inside her home, "... basically duct-taped from above her nose down to her chest area." (Dockery record - C.P. at 109-10) Although she had begged for her life, Andrews was suffocated by her tormentors. (Dockery record - C.P. at 135-36) The motive was robbery. (Dockery record - C.P. at 110)

The above facts also appear in the Scruggs record in Scruggs's Exhibit "L" to his motion for post-conviction relief. (C.P. at 77)

On March 13, 2007, Dockery, by all appearances, entered a voluntary and intelligent plea of guilty to a reduced charge of murder less than capital in the Circuit Court of DeSoto County, Robert P. Chamberlin, Circuit Judge, presiding. Dockery was sentenced to life imprisonment following a sentencing hearing conducted on March 19, 2007. (Dockery record - C.P. at 125-50)

Scruggs, one of Dockery's co-indictees, went to trial on August 31, 2006. After the presentation of the State's case-in-chief, Scruggs elected to plead guilty to a reduced charge of murder less than capital. (C.P. at 113-142) Scruggs was thereafter sentenced to life imprisonment. Over three years later he and his writ writer filed a rather lengthy motion for post-conviction relief asserting six (6) individual grounds for relief. (C.P. at 10-43)

The target of Scruggs's post-conviction motion was his plea of guilty to murder less than capital and the life sentence imposed in its wake. Scruggs claimed both his plea and sentence were tainted because, *inter alia*, his plea was involuntary, his lawyer ineffective and he, Scruggs, is actually innocent of the charge.

Robert Chamberlin, Circuit Judge, found as a fact and concluded as a matter of law that the petitioner's motion was without merit and should be dismissed summarily for lack of sufficient



support. (C.P. at 97-102; appellee's exhibit A, attached)

In his appeal to this Court, Scruggs raises two (2) identifiable issues which are quoted verbatim as follows:

**Issue No. 1.** "Whether the trial court erred in its failure to find a factual basis for Scruggs's plea."

**Issue No. 2.** "Whether the trial court erred in failing to inform Scruggs of the elements of the reduced charge of simple murder."

Scruggs's "Petition to Enter Plea of Guilty" is a matter of record at C.P. 113-118.

The record does not contain a transcript of the State's case-in-chief which Judge Chamberlin incorporated into the present record for the purpose of supplying the required factual basis relied upon by the court. It does contain a transcript of the plea-qualification proceedings which took place after the State had presented its case-in-chief and after Scrugg's motion for a directed verdict was overruled. (C.P. 121-142)

### **SUMMARY OF THE ARGUMENT**

If there was sufficient evidence to withstand Scruggs's motion for a directed verdict as to capital murder, it stands to reason there was a sufficient factual basis for Scruggs's plea of guilty to the lesser included offense of murder less than capital and that Scruggs was well aware of that factual basis.

In any event, as will hereinafter be pointed out, any claim targeting the lack of a factual basis for simple murder was not raised in Scruggs's motion for post-conviction collateral relief.

"The burden is upon [Scruggs] 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).

Scruggs has failed to do so here.

Regrettably, neither one of the two issues raised and presented here and now were raised then and there in Scruggs's motion for post-conviction relief. Thus, the trial judge never had an opportunity to rule on these claims which are procedurally barred at this late date. By failing to raise these issues in his motion for post-conviction relief, their consideration is precluded on appeal. **Foster v. State**, 716 So.2d 538 (Miss. 1998); **Black v. State**, 806 So.2d 1162 (Ct.App.Miss. 2002); **Culbert v. State**, 947 So.2d 970, 972 (¶9) (Ct.App.Miss. 2006). Accordingly, these issues are barred from appellate review, and we respectfully invite this Court to so find.

Nevertheless, we briefly address the merits of Scruggs's post-plea complaints.

"This court reviews the denial of post-conviction relief under an abuse of discretion standard." **Phillips v. State**, 856 So.2d 568, 570 (Ct.App.Miss. 2003). A trial court's dismissal of a motion for post-conviction relief will only be disturbed in cases "where the trial court's decision was clearly erroneous." **Crosby v. State**, 16 So.3d 74, 77 (¶5) (Ct.App.Miss. 2009).

Judge Chamberlin did not abuse his judicial discretion in summarily denying Scruggs's request for post-conviction relief for the following reasons: (1) The circuit judge was correct when he held that a criminal defendant who has entered a plea of guilty cannot litigate his actual guilt on appeal from a denial of post-conviction relief unless the defendant can demonstrate his plea was neither knowing nor voluntary [**Peckinpugh v. State**, 949 So.2d 86, 91 (Ct.App.Miss. 2006)]; (2) Scruggs waived his Sixth Amendment right to a speedy trial [**Anderson v. State**, 577 So.2d 390 (Miss. 1991)] as well as any Fifth Amendment right to assail the voluntariness of his allegedly coerced confession [**Swindoll v. State**, 859 So.2d 1063 (Ct.App.Miss. 2003)]; (3) Scruggs's affidavits do not qualify as newly discovered evidence [**Carr v. State**, 873 So.2d 991 (Miss. 2004)];

and (4) Scruggs has failed to demonstrate his lawyer's performance was deficient and that any deficiency prejudiced Scruggs [**Strickland v. Washington**, 466 U.S. 668 (1984)].

It is enough to say that Scruggs's papers, including the recanting affidavits, fail to meet 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 [or plea], as well as being *almost certainly conclusive* that it would cause a different result."]; **Parker v. State**, No. 2010-CP-01882-COA decided August 30, 2011 (§§ 15-16) [Not Yet Reported].

Judge Chamberlin specifically found as a fact that "... the Court file reflects that a statement of the Co-Defendant Dockery exonerating Scruggs was included in Scruggs's response to the State's motion for reciprocal discovery in January 9, 2006, long before Scruggs entered his plea of guilty." (C.P. at 99) Judge Chamberlin was correct when he concluded as a matter of law that "... this information would not be considered new evidence." (C.P. at 99)

Finally, Scruggs's papers were time-barred as well. **Steward v. State**, 18 So.3d 895 (Ct.App.Miss. 2009).

In short, Judge Chamberlin did not abuse his judicial discretion in summarily denying the requested relief based upon his finding as a fact and concluding as a matter of law that Scruggs could prove no set of facts that would entitle him to post-conviction relief.

The six (6) page order and opinion issued by the circuit judge summarily denying post-conviction relief addresses each individual claim and includes citations to the applicable legal authority. We adopt his findings here.

Summary denial was not an abuse of judicial discretion and was clearly practical, prudent

and proper.

## ARGUMENT

### THE FINDINGS OF FACT AND CONCLUSIONS OF LAW REACHED BY JUDGE CHAMBERLIN ARE NEITHER CLEARLY ERRONEOUS NOR MANIFESTLY WRONG.

“The burden is upon [Scruggs] 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).

Scruggs has failed to do so here.

His claim of actual innocence is materially contradicted by the record. (R. 130-31, 135)

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).

Stated somewhat differently, “[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.*

Our response to the claims raised by Scruggs have been fully and fairly addressed by Judge Chamberlin in his six (6) page order and opinion denying post-conviction collateral relief which is right on target on each issue.

We adopt those findings of fact and conclusions of law and rely upon the citations of legal authority relied upon by Judge Chamberlin.

We add only the following.

Scruggs's motion for post-conviction relief contains six (6) individual claims summarized as follows:

Claim 1, along with Scruggs's amended claim (C.P. at 85-87), deals with Scruggs's actual innocence. (C.P. at 12)

Claim 2 argues the evidence was not overwhelming. (C.P. at p. 15)

Claim 3 targets an allegedly involuntary guilty plea. (C.P. at p. 20)

Claim 4 targets allegedly ineffective counsel. (C.P. at 25)

Claim 5 deals with the alleged denial of Scruggs's right to a speedy trial. (C.P. at 30)

Claim 6 says critical evidence was withheld from Scruggs.

The amended claim, according to Scruggs's writ writer, is offered in support of Scruggs's claim of actual innocence found in claim number 1. (C.P. at 85-87)

Neither of the two claims asserted on appeal, i.e., failure of the trial court to find a factual basis for Scruggs's guilty plea and failure of the trial court to inform Scruggs of the elements of the reduced charge of simple murder (Brief of Appellant at 10) were raised or subsumed in the six (6) individual claims addressed in Scruggs's motion for post-conviction relief. (C.P. at 5-33)

"Because [Scruggs] did not raise th[ese] [two] issue[s] in his petition for post-conviction relief, [their] consideration is precluded on appeal." **Foster v. State**, 716 So.2d 538, 540 (Miss. 1998), citing **Berdin v. State**, 648 So.2d 73, 80 (Miss. 1994). *See also* **Culbert v. State**, 947 So.2d 970, 972 (¶9) (Ct.App.Miss. 2006)[Issues could not be raised on appeal of denial of motion for post-conviction relief where such issues "... were never raised before the trial court."]; **Black v. State**, 806 So.2d 1162, 1164 (Ct.App.Miss. 2002) citing **Douglas v. Blackmon**, 759 So.2d 1217 (¶9) (Miss. 2000) ["(T)he law is well settled in this state that an appellant cannot present on appeal issues which were not first presented to the trial court."] *Cf.* **Harris v. State**, 768 So.2d 353,354 (¶5)

(Ct.App.Miss. 2000).

Scruggs's arguments are without merit for this reason, if for no other.

Moreover, they are time-barred as well. Scruggs entered his plea of guilty on August 31, 2006, the day he went to trial. Scruggs's motion for post-conviction relief was filed on September 25, 2009.

Scruggs had a window of opportunity from August 31, 2006, until August 31, 2009, to file his post-conviction papers. His motion was not officially filed with the clerk until September 25, 2009. (C.P. at 9) This was too little too late. **Davis v. State**, 958 So.2d 252, 254 (¶ 6) (Ct.App.Miss. 2007).

Scruggs's post-conviction claims were clearly time-barred by virtue of Miss.Code Ann. §99-39-5(2). **Steward v. State**, 18 So.3d 895 (Ct.App.Miss. 2009); **Stroud v. State**, 978 So.2d 1280 (Ct.App.Miss. 2008); **Bester v. State**, 976 So.2d 939 (Ct.App.Miss. 2007), reh denied, cert denied 977 So.2d 343 (2007); **Little v. State**, 918 So.2d 97 (Ct.App.Miss. 2006); **Trotter v. State**, 907 So.2d 397 (Ct.App.Miss. 2005); **Sones v. State**, 828 So.2d 216 (Ct.App.Miss. 2002).

It appears Scruggs missed the three year window of opportunity by one month. The three (3) year statute of limitations for bringing a petition for post-conviction relief begins to run on the date the defendant enters his plea of guilty. **Sneed v. State**, 722 So.2d 1255 (Miss. 1998). Close doesn't count. **Owens v. State**, 17 So.3d 628 (Ct.App.Miss. 2009).

Scruggs has failed to show any exception to the time bar.

In the end, Scruggs, by voluntarily pleading guilty, 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)

## CONCLUSION

After directing the State to file an Answer to Scruggs's motion for post-conviction relief (C.P. at 88), Judge Chamberlin considered Scruggs's motion for post-conviction relief pursuant to the provisions of Rule 56 of the Miss.R.Civ.Proc. He found that Scruggs could prove no set of material facts that would entitle Scruggs to relief and, in effect, issued summary judgment in favor of the state.

Miss.Code Ann. § 99-39-11 also 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. **Garlotte v. State**, 530 So.2d 693 (Miss. 1988) ["This case presents an excellent example of the appropriate use of the summary disposition provision of §99-39-11(2)]; **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 plea voluntarily entered by Ricky Scruggs or vacation of his sentence to life imprisonment imposed in its wake. Accordingly, the judgment entered in the lower

court summarily denying Scruggs's motion for post-conviction collateral relief should be affirmed.

Respectfully submitted,

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**IN THE CIRCUIT COURT OF DESOTO COUNTY, MISSISSIPPI**

**RICKY SCRUGGS**

**PETITIONER**

**VS.**

**CAUSE NO. CV2009-263CD**

**STATE OF MISSISSIPPI**

**RESPONDENT**

**ORDER**

This came before the Court upon Ricky Scruggs ("Scruggs"), *pro se*, filing his "Post Conviction Collateral Relief...", and the Court, having reviewed the pleadings and all court files, and having ordered the State to respond to the motion, finds that the petition is without merit and should be dismissed, without benefit of a hearing.

1.

According to the criminal court file, Scruggs, along with Tony Caradine and Mario Dockery, were indicted in May of 2004 in CR2004-300RD for conspiracy to commit robbery and capital murder. Scruggs entered a plea of guilty to the reduced charge of simple murder on August 31, 2006, in the middle of his trial, and sentenced to life in prison. The other count of the indictment was remanded.

2.

In his petition (which apparently was written by the same writ writer as in Caradine's PCR, which has also been under consideration by the Court, as they are in the same handwriting and substantially similar), Scruggs asserts he is actually innocent of the crime for which he entered a plea of guilty, the evidence is not overwhelming against Scruggs, his guilty plea was made unknowingly and involuntarily, he received ineffective assistance of counsel, his right to speedy trial was violated, he claims evidence was withheld from this case, and additional



**FILED**  
DESOTO COUNTY, MISSISSIPPI

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DALE K. THOMPSON, CIRCUIT CLERK

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evidence was to be considered. Attached to his petition are sworn statements of Mario Dockery, himself, and Tony Caradine where each of them contradicts their earlier statements that they were involved in the crime and claims that their statements were coerced and under threats by the officers. He also attached items from discovery. He also filed amendments to his motion adding the case of *N.C. v. Alford* and some additional arguments about the evidence.

The State in their scant response which is almost identical to the response in the co-defendants case did not submit any authority for their arguments and provided little assistance for the Court in ruling on the merits of this petition.

3.

The Court of Appeals in *Peckinpaugh v. State*, 949 So.2d 86, 91 (Miss. App. 2006) said

A criminal defendant who has entered a guilty plea cannot litigate his actual guilt on appeal from a denial of post-conviction relief, unless the defendant can show that the guilty plea was not knowingly, voluntarily, or intelligently entered. (Cites omitted.)

The Court of Appeals in *Jenkins v. State*, 986 So.2d 1031, 1033 (Miss. App. 2008) set forth

A plea of guilty is binding only if it is entered voluntarily and intelligently. *Myers v. State*, 583 So.2d 174, 177 (Miss.1991). It is voluntary and intelligent when the defendant is informed of the charges against him and the consequences of his plea. *Alexander v. State*, 605 So.2d 1170, 1172 (Miss.1992); *Vittitoe v. State*, 556 So.2d 1062, 1064 (Miss.1990). A defendant must be told that a guilty plea involves a waiver of the right to a trial by jury, the right to confront adverse witnesses, and the right to protection against self incrimination. URCCC 8.04. "A showing that the plea was voluntarily and intelligently made must appear in the record." URCCC 8.04(A)(3).\

The Court in *Jenkins* also said the Court of Appeals had previously held citing *Jones v. State*, 915 So.2d 511, 514(¶ 10)(Miss. App. 2005).

Newly discovered evidence is relevant only in situations where a defendant went to trial and was convicted. If, following the trial, a defendant discovers relevant

and material evidence which could not have reasonably been discovered prior to trial, the defendant may seek to have his conviction set aside based on the newly discovered evidence. 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*, 986 So.2d at 1034.

## 4.

Regarding new evidence, the Court file reflects that a statement of the Co-Defendant Dockery exonerating Scruggs was included in Scruggs' response to the State's motion for reciprocal discovery in January 9, 2006, long before Scruggs entered his plea of guilty. Therefore, this information would not be considered new evidence.

Regarding his plea being involuntary, according to the plea transcript, Scruggs admitted that he committed the crime. He also stated that he was satisfied with the services of his attorney and that he was not coerced, forced or threatened in order to enter his plea.

The Court finds that if Scruggs entered a valid guilty plea, then he explicitly waived any right to suppress the alleged coerced confessions. *Swindoll v. State*, 859 So.2d 1063, 1065 (Miss. App. 2003). Upon a review of the petition to enter plea of guilty and the transcript of the plea hearing, the Court finds that Scruggs' plea was not involuntary and he waived any rights regarding the alleged coerced confession when he entered his plea.

Also, as the Courts have said over and over a guilty plea waives speedy trial violations. *Jenkins v. State*, 986 So.2d 1031, 1034 (Miss.App.,2008).

Regarding the allegation the evidence was not overwhelming, URCCC 8.04 provides that before the trial court may accept a plea of guilty, the court must determine that the plea is voluntarily and intelligently made and that there is a factual basis for the plea. In Scruggs' trial, the State had put on their case and the Court had denied a directed verdict. The offer of proof for

the plea consisted of the State's evidence previously presented at trial. The transcript of the testimony presented at trial has been transcribed and placed in the Court record. The Court had the proof of the State's case and as such the factual basis was provided for the plea.

The Court also finds upon a review of the petition and the plea dialogue that Scruggs has not proven ineffective assistance of counsel based on the requirements of *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674 (1984); and *Moody v. State*, 644 So.2d 451, 456 (Miss.1994). Scruggs' counsel filed numerous motions, including a motion suppress his statement as being coerced.

5.

In considering this PCR motion and ruling adversely to Scruggs without the benefit of an evidentiary hearing, the Court is ever mindful of its solemn responsibility as clearly pronounced in *Reeder v. State*, 783 So.2d 711 (Miss. 2001), in which the Supreme Court of Mississippi stated:

¶ 7. §Miss.Code Ann. 99-39-11 (2000) sets out the proper procedure for summary dismissal of a petition seeking post-conviction relief. The trial judge must promptly examine "the original motion, together with all the files, records, transcripts and correspondence relating to the judgment under attack." *Id.* If, after conducting such an examination, "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." *Id.* Should the trial judge choose not to dismiss the petition, he "shall order the state to file an answer or other pleading within the period of time fixed by the court or to take such other action as the judge deems appropriate." *Id.*

¶ 8. If the trial judge goes beyond the materials enumerated in § 99-39-11 and receives affidavits or other evidence from the State, he may enter summary judgment against the petitioner under §Miss.Code Ann. 99-39-19 (2000). It provides "[i]f the motion is not dismissed at a previous stage of the proceeding, the judge, after the answer is filed and discovery, if any, is completed, shall, upon a review of the record, determine whether an evidentiary hearing is required. If it

appears that an evidentiary hearing is not required, the judge shall make such disposition of the motion as justice shall require." Id. Finally, "[t]he court may grant a motion by either party for summary judgment when it appears from the record that there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law." Id.

*Reeder v. State*, 783 So.2d at 714.

A "[p]ost-conviction relief petition which meets basic pleading requirement is sufficient to mandate an evidentiary hearing unless it appears beyond doubt that petitioner can prove no set of facts in support of claim which would entitle him to relief." *Robertson v. State*, 669 So.2d 11, 13 (Miss.1996).

In sum, this Court, consistent with case law, has considered Scruggs' PCR motion pursuant to MRCP 56. Scruggs has been given the benefit of every reasonable doubt concerning the existence of any material fact issue. In considering the entire court files in this cause and cause number CR2004-300CD, which include, *inter alia*, Scruggs' PCR pleadings, annexed exhibits, all records, correspondence, and transcripts of hearings, and also considering all prior proceedings had and conducted in the criminal cause, the Court concludes that it appears beyond doubt that Scruggs can prove no set of facts in support of his claims which would entitle him to relief. Accordingly, the relief requested in Scruggs' PCR motion will be denied and the motion dismissed with prejudice.

Therefore, it is hereby **ORDERED** that the relief requested in Ricky Scruggs' post-conviction relief motion be and the same is **DENIED**; that the "Post Conviction Collateral Relief..." filed by Ricky Scruggs in the above styled and numbered cause is **DISMISSED**; and that the Clerk of this Court shall mail certified copies of this Order to Ricky Scruggs, #123570, Mississippi Department of Corrections, P.O. Box 880, Parchman, MS 38738; the Records Department, Mississippi Department of Corrections, P.O. Box 880, Parchman, MS 38738; and

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the District Attorney.

**SO ORDERED** this the 12 day of July, 2011.



**ROBERT P. CHAMBERLIN**  
**CIRCUIT COURT 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 Robert P. Chamberlin  
Circuit Court Judge  
Post Office Box 280  
Hernando, MS 38632

Honorable John Champion  
District Attorney  
365 Loshier Street  
Suite 210  
Hernando, Ms 38632

Ricky Scruggs, #123570  
Unit 29-F  
Post Office Box 1057  
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This the 8<sup>TH</sup> day of NOVEMBER, 2011.

  
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