

COURT OF APPEALS OF THE STATE OF MISSISSIPPI

RICKY SCRUGGS

APPELLANT

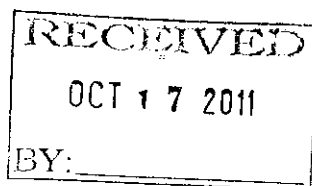
V.

NO. 2011-CP-01260-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF OF APPELLANT



RICKY SCRUGGS  
Unit 29-F  
Parchman, Ms 38738

Appellant Pro Se

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V.

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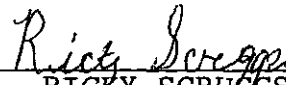
APPELLEE

CERTIFICATE INTERESTED PERSONS

The undersigned pro se appellant of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of this Court may evaluate possible disqualifications or recusal.

1. State of Mississippi
2. Ricky Scruggs

THIS 12 day of October 2011

  
\_\_\_\_\_  
RICKY SCRUGGS  
Appellant Pro Se

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## STATEMENT OF THE ISSUES

ISSUE NO. 1: WHETHER THE TRIAL COURT ERRED IN ITS FAILURE TO FIND A FACTUAL BASIS FOR SCRUGGS PLEA?

ISSUE NO. 2: WHETHER THE TRIAL COURT ERRED IN ITS FAILURE TO INFORM SCRUGGS OF THE ELEMENTS OF THE REDUCED CHARGE OF SIMPLE MURDER?

## STATEMENT OF THE CASE

This appeal proceeds from the Circuit Court of Desoto County Mississippi, and a judgement of conviction for the crime of simple murder against Ricky Scruggs and the resulting life sentence following a plea of guilty to reduced charge of simple murder from the indicted charge for conspiracy to commit robbery and capital murder entered in the middle of trial on August 31, 2006, Honorable Robert P. Chamberlin, Curcuit Judge, presiding. Ricky Scruggs is presently incarcerated with the Mississippi Department of Corrections.

## FACTS

In May of 2004, Appellant Scruggs, along with Tony Caradine and Mario Dockery, were indicted 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. [R. Id], [T.p. 97], and sentenced to life in prison, with count I being remanded. [R.id], [T.119]. Scruggs (PCR) in the trial court was timely, alleging (1) Actual Innocence (2) The evidence is not overwhelming (3) Guilty plea was involuntarily and unknowingly (4) Ineffective assistance of counsel (5)

speedy trial rights violated (6) Withheld evidence. The trial court dismissed the motion. [r. id], [T.97]. Scruggs timely appeals from the trial court's order dismissing the motion.

The petition to enter plea of guilty is located at [R.Id],[T. 113 - 118] and the plea colloquy located at [R. Id], [T. 121-142] and clerks certificate attesting to fact that [T.record p. 1-144 is a true and correct copy of all proceedings had in the case.[R. Id], [T. 144]. No where in the petition to plead guilty nor the plea colloquy did the trial court provide a factual basis for the plea nor actually inform scruggs of the elements of simple murder.

#### SUMMARY OF THE ARGUMENT

Scruggs was denied due process of law by the trial court's failure to demonstrate a factual basis by evidentiary foundation and failure to inform him on the record the elements of the reduced charge of simple murder.

#### ARGUMENT:

##### I.

Scruggs contends that the trial court did not have a factual basis upon which to accept his guilty plea.

##### Law

[A] factual basis is an essential part of the constitutionally valid and enforceable decision to plead guilty. This factual basis cannot simply be implied from the fact that the defendant entered a plea of guilty. Rather there must be an evidentiary foundation in the record which is "sufficiently specific to allow

the court to determine that the defendant's conduct was within the ambit of that defined as criminal! Unless courts are satisfied that such a factual basis exists, they are admonished not to enter judgement on a plea of guilty. "Lott v. State, 597 So. 2d 627, 628 (Miss. 1992). See, Austin v. State, 734 So. 2d234 (Miss. App.COA 1999).

A review of scruggs guilty plea transcript reveals that the trial court did not inquire of Scruggs regarding the factual circumstances surrounding his plea of guilty to simple murder. The trial court inquired whether Scruggs, in fact, committed the crime to which Scruggs responded positively. However, no factual basis was otherwise established upon which the court could place the defendant's conduct "[w]ithin the ambit of that defined as criminal." Gaskin v. State, 618 So. 2d 103, 106 (Miss. 1993) at 106. "only his bare admission of guilt [can] be said to bear on a factual basis for [**Scruggs**] plea. See, Austin supra.

This court must review the record as a whole to determine whether a factual basis existed to support the plea. *Id.* In **Gaskin**, the record contained affidavits and a signed guilty plea petition which established a factual basis to support that defendants crime of murder and armed robbery. Unlike **Gaskin**, nothing contained in the record in the instant case provide similar support for acceptance of Scruggs guilty plea. In fact what the district Attorney say he would offer is missing. [R. Id], [T.127] paragraph two and three. Appellant Scruggs would argue that what

is referred to even if it was apart of this record would not amount to enough to even send the case to a jury on the original charge or the reduced charge of simple murder. Neither this Court nor the Appellant Scruggs has the luxury of speculation, but if it were allowed he would speculate that the reason the testimony referenced is not a part of this record is because the lower court does not want this court to see it because it does not make out a prima face case against Scruggs to even have been sent to a jury nor would it establish a factual basis for his plea. Not only was the Court reporter Ordered to transcribe the testimony at trial and make it a part of the record but had a duty as well, [T. 95-96] requires a new trial without alleging specific prejudice. See, United States v. Selva, 559 F. 2d 1303 (5th Cir. 1977).

**ARGUMENT:**

**II.**

**Scruggs contends that the trial court failed to inform him of the elements of the reduced charge of simple murder.**

"It is essential that an accused have knowledge of the critical elements of the charge against him, that he fully understand the charge against him. Gaskin, supra.

See example what facts ampt up from simple murder to capital murder and what facts mitigate down from capital murder to simple murder. The fact is the trial judge does not do what he wants in a case every case is controlled by law see, Stevenson v. State, 733 So. 2d 177 (Miss. 1998)(Malice aforethought is not an element of capital murder of a peace officer. See Lanier v. State, 450 So. 2d 69, 81 (Miss. 1984)(Lanier finally plead guilty to simple murder under indictment for capital murder of a peace officer



the trial judge having to explain that under our law "I cannot allow you to plead to simple murder under indictment of capital murder of a peace officer unless you waive indictment on simple murder in other words these are examples furthering the reasons why the elements must be explained is fundamental. In the instant case not only was Scruggs not informed of the elements of simple murder the applicable statute §97-3-19 (a)(b)(c) was not even mentioned were not discussed nor mentioned in the record, including the order which reduced the charge to simple murder, neither the order which accepted Scruggs guilty plea, listed the elements of simple murder or the applicable statute.

**CONCLUSION**

BECAUSE THE RECORD FAIL TO ESTABLISH A FACTUAL BASIS FOR THE PLEA AND FULLY INFORM SCRUGGS OF THE ELEMENTS OF THE REDUCED CHARGE OF SIMPLE MURDER THIS COURT SHOULD FIND THE GUILTY PLEA TO HAVE BEEN MADE INVOLUNTARILY URCCCC 8.04(A)(3). THIS COURT SHOULD **REVERSE** THE TRIAL COURT'S DENIAL OF (PCR), **VACATE** THE PLEA AND **REMAND** ON THESE ISSUES AND INSTRUCT THE TRIAL COURT TO **GRANT** A NEW TRIAL.

Respectfully submitted,

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Appellant Pro Se

CERTIFICATE OF SERVICE

I, Ricky Scruggs, Appellant, pro se, do hereby certify that I have caused a true and correct copy of the foregoing Appellant's brief to be mailed to the parties shown below.

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Hon. Robert P. Chamberlin  
Circuit Court Judge  
Hernando, Ms 38632

This the 12 day of October, 2011.

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