

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NATHANIEL WALDEN

APPELLANT

VS.

NO. 2014-CP-00165-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES.	ii
STATEMENT OF ISSUE.....	1
PROCEDURAL HISTORY AND STATEMENT OF FACTS.....	1
SUMMARY OF ARGUMENT.....	1
ARGUMENT.	2
THE TRIAL COURT CORRECTLY DISMISSED WALDEN’S MOTION FOR POST-CONVICTION RELIEF, FINDING THAT HIS INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM LACKED MERIT.....	2
CONCLUSION.	3
CERTIFICATE OF SERVICE.	4

TABLE OF AUTHORITIES

STATE CASES

<i>Banks v. State</i> , 158 So. 3d 1215 (Miss. Ct. App. 2015).....	2
<i>Boyd v. State</i> , 797 So. 2d 356 (Miss. Ct. App. 2001).	2
<i>Cherry v. State</i> , 24 So. 3d 1048 (Miss. Ct. App. 2010).....	2
<i>Roach v. State</i> , 116 So.3d 126 (Miss. 2013)	2
<i>Vielee v. State</i> , 653 So. 2d 920 (Miss. 1995).....	2
<i>Walden v. State</i> , 29 So.3d 17 (Miss. Ct. App. 2008).....	1

STATE STATUTES

Miss. Code Ann. § 99-39-23(7).....	2
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STATEMENT OF ISSUE

THE TRIAL COURT CORRECTLY DISMISSED WALDEN'S MOTION FOR POST-CONVICTION RELIEF, FINDING THAT HIS INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM LACKED MERIT.

PROCEDURAL HISTORY AND STATEMENT OF FACTS

In July 2005, Nathaniel Walden was indicted for the murder of his sister-in-law, Mary Walden, and for shooting into an occupied dwelling. C.P. 22. He was found guilty on both counts by a Holmes County Circuit Court jury. C.P. 91. This honorable Court affirmed his convictions and sentences. *Walden v. State*, 29 So. 3d 17 (Miss. Ct. App. 2008).

In 2011, Walden filed a motion for leave to proceed in the trial court which was denied by the Mississippi Supreme Court. C.P. 176-177. In its order denying leave, the Court specifically found that Walden failed to show that he received ineffective assistance of counsel. C.P. 176. Walden filed a successive motion for leave to proceed, which was granted by the Mississippi Supreme Court on June 30, 2013. C.P. 178-179.

Walden filed a motion for post-conviction relief in the trial court raising only the issue of ineffective assistance of counsel. C.P. 6-15. The trial court dismissed the motion on two grounds. First, the trial court incorrectly found that it was without jurisdiction to hear the motion, finding that Walden had not obtained leave from the supreme court. C.P. 180. The trial court also noted that Walden's motion was time barred. C.P. 180. However, the trial court went on to consider the merits of Walden's claim and found that his ineffective assistance of counsel claim failed to meet both prongs of the *Strickland* test. C.P. 180-182.

Aggrieved, Walden appeals the trial court's dismissal of his motion for post-conviction relief.

SUMMARY OF ARGUMENT

The trial court properly found that Walden's ineffective assistance of counsel claim was

without merit since it was supported only by his own bare assertions.

ARGUMENT

THE TRIAL COURT CORRECTLY DISMISSED WALDEN'S MOTION FOR POST-CONVICTION RELIEF, FINDING THAT HIS INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM LACKED MERIT.

Walden alleges that the State offered a plea deal wherein the State would agree to allow him to plea to the lesser charge of manslaughter and drop the shooting into an occupied dwelling charge. Walden claims that defense counsel advised him to reject the deal, allegedly advising him that the State would not be able to prove that he intentionally murdered the victim.

“The burden of proof is on the petitioner to show by a preponderance of the evidence that she is entitled to relief.” *Roach v. State*, 116 So.3d 126, 131 (¶15) (Miss. 2013) (internal quotations omitted); Miss. Code Ann. §99-39-23(7). Walden has no proof to substantiate his claim, as it is supported by no more than his own bare assertion. The trial court correctly found that Walden's ineffective assistance claim supported by only his own affidavit had no merit. Relying on *Vielee v. State*, 653 So. 2d 920, 922 (Miss. 1995), this Court has repeatedly held that ineffective assistance of counsel claims supported only by the prisoner's own affidavit are properly found to be without merit. *Banks v. State*, 158 So. 3d 1215, 1219 (¶14) (Miss. Ct. App. 2015); *Cherry v. State*, 24 So. 3d 1048, 1051 (¶6) (Miss. Ct. App. 2010); *Boyd v. State*, 797 So. 2d 356, 364 (¶20) (Miss. Ct. App. 2001). Accordingly, the trial court correctly found that Walden's ineffective assistance of counsel claim was without merit.

Moreover, Walden's claim is highly suspect considering the fact that he very candidly stated in his motion for post-conviction relief filed in the trial court that the facts relating to the murder and shooting into an occupied dwelling were “wholly uncontested,” and to the extent there were any disputed facts, they “have no legal significants [sic] on the cause.” C.P. 9. Walden then proceeds

to lay out all of the facts and evidence presented at trial that show he was guilty beyond a reasonable doubt of murder. C.P. 9-12. Because the facts were undisputed and because Walden was so clearly guilty of murder, it is highly doubtful that defense counsel would have told him that the State would be unable to prove murder. But again, Walden has no proof that a deal was ever offered, and as such, simply cannot show by a preponderance of the evidence that he received deficient performance which resulted in *Strickland* prejudice.

CONCLUSION

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

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, LA DONNA C. HOLLAND, hereby certify that on this day I electronically filed the foregoing pleading or other paper with the Clerk of the Court using the MEC system which sent notification of such filing to the following:

Further, I hereby certify that I have mailed by United States Postal Service the document to the following non-MEC participants:

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This the 8th day of July, 2015.

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