

IN THE MISSISSIPPI COURT OF APPEALS

NATHANIEL WALDEN

**FILED**

APPELLANT

VS

MAY 08 2015

2014-CP-00765-COA

STATE

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SUPREME COURT  
COURT OF APPEALS

APPELLEE

APPEALED FROM THE HOLMES COUNTY CIRCUIT COURT

BRIEF OF APPELLANT

NATHANIEL WALDEN (pro se)

U/30-D, A-zone, Bed 8

PARCHMAN, MS 38738

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TABLE OF AUTHORITY

U.S. SUPREME COURT

Strickland v. Washington 466 U.S. 668, 669, 687 (1984) . . . 1.3.

STATE

- 1.) Brown v. State 626 So.2d 114 (Miss. 1993). . . . 4
- 2.) Boddie v. State 875 So.2d 180, 183, (Miss. 2004) . . . 1
- 3.) Dillion v. State 641 So.2d 1223 (Miss. 1994) . . . 6
- 4.) Ford v. State 708 So.2d 73, 75 (Miss. 1998) . . . 5
- 5.) Johnson v. State 848 So.2d 906, 908-909, (Miss. 2003) . . . 3
- 6.) Keith v. State 999 So.2d 383, 386 (Miss. 2008) . . . 1
- 7.) Mayor and Board of Alderman, City of Ocean Spring v. Homebuilders Association  
of Mississippi, Inc, et. al 932 So.2d 44, 59 (Miss. 2006). . . . 2
- 8.) Mosley v. State 749 So.2d 286, 288 (Miss. 1999) . . . 5
- 9.) Robinson v. State 809 So.2d 734, 736 (Miss. 2002) . . . 5
- 10.) State v. Santiago 773 So.2d 921, 923-924 (Miss. 2000) . . . 6
- 11.) Walker v. State 703 So.2d 266, 268 (Miss. 1997) . . . 3
- 12.) Walton v. State 752 So.2d 452, 457, (Miss. 1999) . . . 5
- 13.) 841 So.2d 207, 212 (Miss. ?) . . . 5, 6

STATUTES

99-39-9  
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99-39-11  
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## STATEMENT OF THE ISSUES

### I.

Whether the court erred in fact by ruling that it didn't have jurisdiction, because the appellant hadn't been granted leave?

### II.

Whether the court erred by ruling that appellant was procedurally barred after the Mississippi Supreme Court had rejected that argument by the appellees doing the appellant's application to leave?

### III.

Whether the court erred by applying Strickland to the ~~plea~~ <sup>trial preceding</sup> rather than to plea preceding?

### IV.

Whether the trial court committed an error in law by dismissing the appellant's claim based on not having an affidavit from his attorney, and having only his on affidavit?

## SUMMARY OF THE ARGUMENT

The court abused its discretion and made several errors in both facts and laws.

## STANDARD OF REVIEW

"This court's standard of review of a trial court's dismissal of a motion for post-conviction relief is such that the trial court's findings of fact will not be reversed unless they are clearly erroneous; however, questions of law will be reviewed de novo." Keith v. State 999 So. 2d 383,386 (¶4) (Ms. 2008), citing Boddie v. State 875 So. 2d 180,183 (¶6) (Ms. 2004).

## I.

Whether the court erred in fact by ruling that it didn't have jurisdiction, because the appellant hadn't been granted ~~to~~ leave from the Mississippi Supreme Court?

- 1.) The appellant was granted leave by the Mississippi Supreme Court on June 20, 2013, in order number 2011-M-00936.
- 2.) According to the records, the Holmes County Circuit Clerk (a Ms. Earline Wright-Hart), the order was filed with the Holmes County Circuit Court on June 26, 2013, at 10:30 A.M. (see Ex,A).
- 3.) However, in the court's order it barred the claim because it lack jurisdiction based on the appellant's failure to receive leave. (see Holmes County order No. 2013-0150,p.1 para 2,).
- 4.) This is a clear error of fact by the Court and it appeared that this error or oversight put into motion a stairway of other errors of fact and laws by the court.

## II.

Whether the court erred by ruling that the appellant was procedurally barred?

- 1.) Also in p.1 para 2, the court ruled that the appellant was time barred.
- 2.) The appellant had filings in the courts which tolled his time. He filed his application to leave within the allotted three (3) year window.
- 3.) However, because the court failed to recognize the leave, it's ruling came into conflict with the Mississippi Supreme Court's

ruling which had rejected the appellee's pro cedural bars argument doing the application before the high court. Therefore there was no need to relitigate that issue before the Holmes County Circuit Court. "The doctrine of collateral estoppel serves a dual purpose. It protects litigants from the burden of relitigating an identical issue with the same party or his privy." Mayor and Board of Alderman, City of Ocean Spring v. Homebuilders Association of Mississippi, Inc, et al. 932 So. 2d 44, 59 (¶61) (Ms. 2006) and, "It promotes judicial economy by preventing needless litigation." i.d.

### III.

Whether the court erred by applying Strickland to the outcome of the trial proceeding, when the claim was based on the plea proceeding?

- 1.) "The standard to be applied to an ineffective assistance of counsel claim was set out by the Supreme Court in Strickland v. Washington 466 U.S. 668, 104 S.Ct 2052, 80 L.Ed.2d 674 (1984). To prove ineffective assistance of, it must be shown (1) that the counsel's performance was deficient, and (2) the deficient performance caused prejudice to the defense." Johnson v. State 848 So. 2d 906, 908-909, (¶7) (Ms.2003); citing Strickland at 687; Walker v. State 703 S0.2d 266, 268 (¶8) (Ms.1997).
- 2.) The bulk of the appellant's claim is that the attorney gave him advice doing the plea bargain that was an error in law.(error) and as a result he turned down a manslaughter plea and went to trial (prejudice.).

- 3.) In the appellant's PCR he points to his trial, it's ~~a~~ result, and the court's ruling ONLY as evidence that the <sup>advice</sup>~~avice~~ given doing the plea phase was beyond any reasonable doubt an error in law, which satisfies the ~~deficient~~ prong of Strickland.
- 4.) The fact that a trial took place, if the appellant went to trial based on the deficient attorney's advice is prejudice within itself.
- 5.) In other words the question isn't whether the outcome of the trial would have been different, but rather if the trial would have ever taken place?
- 6.) Also this claim is distinguished from Brown v. State 626 So.2d 114 (Ms.1993), because Brown never claimed he rejected a plea based on erroneous advice of his attorney. Rather Brown complains simply of the strategy of his attorney at trial.
- 7.) The only legal defence available to the appellant was "manslaughter," in which the State was willing to stipulate without the defendant risking a trial of murder.
- 8.) Also the fact is the Mississippi Supreme Court could have easily ruled that the PCR was without merit doing it's <sup>review</sup>~~review~~ of the application. But instead it granted the leave.

#### IV.

Whether the court erred in law by dismissing the PCR on the fact that the attorney had not provided an affidavit?

- 1.) "In addition to the aforementioned caselaw, the failure of Walton to attach supporting affidavits fails to meet the statutory requirement of

Miss. Code Ann. §99-39-9 (Rev.1994). That section requires affidavits of witnesses who will testify in support of contentions made in a motion for post-conviction relief relative to ineffective assistance of counsel. The fact there are no affidavits does not automatically render the motion invalid." Walton v. State 752 So.2d 452, 457, (¶ 11)(Ms 1999); citing ~~Bore~~ <sup>Ford</sup> v. State 708 So.2d 73,75 (Ms 1998).

- 2.) "The movant has the obligation to assert specific facts that would show entitlement to relief and then, either through his own oath, by supporting affidavits, or other satisfactory means, demonstrate the existence of proof that, if found credible, would support the movant's theory. . . . If such showing is not satisfactorily made in the motion, the trial court ~~may~~ <sup>may</sup> deny relief without the necessity of a hearing. Miss. Code Ann. ~~§99-39-11~~ <sup>§99-39-11</sup> (2) (Rev.2000);" 841 So.2d 207,212 (Ms ?); citing Robinson v. State 809 So.2d 734,736 (¶17)(Ms 2002); Mosley v. State 749 So.2d 286, 288 (¶11)(Ms 1999).
- 3.) In applying the above laws to the appellant's case sub judice it becomes apparent that the court erred by automatic dismissing the PCR.
- 4.) The above language holds "the movant's own oath, supporting affidavits, or other satisfactory means" <sup>it is</sup> in a disjunctive form. In other words it ~~is~~ <sup>may</sup> be either/or.
- 5.) It also stands to be noted that the appellant's claim has went totally uncontradicted.
  - A. The appellees ~~do not~~ <sup>do not</sup> deny that a plea of manslaughter was ~~offered~~.

offered, nor is there anything in the record to contradict this claim.

B. The appellees do not deny that the appellant's attorney was ~~not~~ ineffective when advising him to reject such plea, nor is there anything in the record to contradict such claim.

C. And that the appellant rejected the plea based on such defected advice, nor is there anything in the record to contradict such claim.

- 6.) "Case law has also established the principle that, if the sole source of evidence in support of the movant's own sworn declaration, the court <sup>may</sup> still deny a hearing if the assertions are effectively contradicted by other available evidence, including the transcript of proceedings during the original trial." 841 So.2d 207,212, (¶12)(Ms. ?); citing State v. Santiago, 773 So.2d 921, 923-924 (¶11)(Ms. 2000).
- 7.) The trial transcript and the several courts ruling has shown that the trial attorney did not know Mississippi law.
- 8.) In other words it is more likely than not that he gave the appellant bad advice doing the plea offer.
- 9.) "As there are no other documents in this record to confirm or dispute these claims by Dillon [Appellant], we must assume for the purpose of establishing the minimal facts of the case that they are true." Dillion v. State 641 So.2d 1223(Ms. 1994).
- 10.) Also Common Sense dictates that the reason the Mississippi Supreme Court granted the leave was for the purpose of an evidentiary hearing in order to futher developpe the facts.



11.) Also it must be noted that the trial attorney may be in prison somewhere. And if that be the case then the appellant is prohibited from prison to prison mail, or phone calls, by M.D.O.C. procedures.

REMEDY SAUGHT

The appellant asks this honorable court to please reverse the order of the Holmes County Court, and remand for an evidentiary hearing with an appointment of attorney to help the appellant develop the facts of his PCR.

Respectfully submitted this, the 8, day of May, 2015.

By: Nathaniel Walden

Nathaniel Walden, pro se

Nathaniel Walden # 124890

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Parchman, Ms. 38738

CERTIFICATE OF SERVICE

This is to certify, that I, Nathaniel Walden, Appellant/Partitioner  
have caused to be mailed this day via ILAP the foregoing (APPELLATE BRIEF)  
to the below listed person:

Hon. Jim Hood

Attorney Gen.

P.O.BOX 220

Jackson, Ms. 39205-0220

This the 8 day of May, 2014/15

Nathaniel Walden

pro se