

**FILED**

**JUN 17 2016**

**OFFICE OF THE CLERK  
SUPREME COURT  
COURT OF APPEALS**

IN THE SUPREME COURT OF MISSISSIPPI

NATHANIEL WALDEN

APPELLANT

vs.

CASE NO. 2014-CP-165-SC

STATE OF MISSISSIPPI

APPELLEE

PETITION FOR WRIT OF CERTIORARI

PRO SE

Nathaniel Walden #124890  
MSP, Unit 30-D, A-Zone  
Parchman, MS 38738

**MOTION#**

**2016**

2621

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## PETITION FOR WRIT OF CERTIORARI

### INTRODUCTION:

After the appellant was tried and convicted of murder in violation of Miss. Code Ann. 97-3-19, he filed a timely appeal, a rehearing, a writ of certiorari, and an application to leave in which the attorney constantly argued that the trial court erred by rejecting the defendant's accidental defense.

The COA, and the Mississippi Supreme Court both held that the trial attorney was the one legally incorrect. Once the high courts had held that the trial court was correct in its rejection of the accidental defense the appellant filed another pro se application to leave in which he sided with the several courts previous rulings which had directly rendered the trial attorney's accidental defense legally incorrect, which in turn meant that the trial attorney was constitutional ineffective at the plea stage in which he advised the appellant to reject the manslaughter plea, because the State would have to prove that he intentionally shot the victim or he couldn't be found guilty of murder.

On the second application to leave the Mississippi Supreme Court heard arguments from the appellant and the appellees. In part, the appellee's argued in their "response to application for leave to proceed in post-conviction relief," that the application should be denied because the appellant relied only on his own affidavit. The appellant position to their argument was that his claim of error was supported by the trial transcript, the trial court's rejection of the accidental defense, and both higher court's ruling on that issue. The Mississippi Supreme Court rejected the appellee's argument and granted the leave.

On leave to the trial court, the appellant presented his PCR in which his sole claim was that the trial attorney was ineffective doing the plea phase of the case. He went on to state that he had done everything an illiterate pro se petitioner could do to obtain an affidavit from the State's attorney and the trial attorney who was

more than likely incarcerated himself. In which inmate to inmate calls and mailing is prohibited by MDOC policy.

For reasons unknown, the trial court applied the prejudice prong of Strickland to the outcome of the trial rather than the outcome of the plea. It appears from the trial court's order that the trial court had not properly familiarized itself with the case. In fact, the CoA rendered all the issues that they address of the trial court to be errors and they totally ignored the question of whether the trial court erred by applying Strickland to the trial rather than the plea phase.

On direct appeal the appellees presented the same argument that had been rejected by the Mississippi Supreme Court on the application to leave. The CoA accepted the appellees argument despite the fact that it had been collateral estoppel by the Mississippi Supreme Court's rejection of the same legal argument.

This case has rendered more legal questions than answers since the granting of the application to leave. Where on application to leave only one question was presented: whether the trial attorney constitutional ineffective doing the plea phase?

## REASON TO GRANT THE WRIT

### REASON ONE

The COA has decided the case in conflict with several lines of case laws.

The appellees had argued in their "response to application for leave to proceed in post-conviction relief" p. 2 para 1, "there are no affidavits provided to support these factual claims, other than the petitioner's. A petitioner's affidavit is insufficient to justify or require an evidentiary hearing". See, Lindsay v. State, 720 So. 2d 182, 184 (Miss. 1998). The appellees went on to state, "the petitioner here has not provided affidavits from his attorney, or from anyone else beside himself, the petitioner alleging only that his attorney may be in prison. The court has not been provided affidavits or a summary of proposed testimony of witnesses. The petitioner has therefore failed to make a prima facie showing of his claim. See, Hargett v. State, 864 So. 2d 283, 285 (Miss. Ct. App. 2003).

In the appellant's "rebuttal brief" to the appellees above response he pointed out to the Supreme Court that his claim of attorney error is supported primary by the trial records, previous court decisions in this cause and Mississippi laws. The petitioner did attempt to secure other affidavits, but is limited to his movement because he is incarcerated, which is all the more reason to grant the application and appoint this indigent petitioner an attorney under 99-15-15, so he may have a "meaningful opportunity to be heard" and secure witnesses to prove the factual issue of his claim," p. 2 para 1 of appellant's application to leave "rebuttal brief".

The Supreme Court rejected the appellee's legal argument and granted the leave. A.) Lewis v. Pagel, 172 So. 3d 142, 175, TP 23 (Miss. 2015) states: "The doctrine of the law of the case is similar to that of former adjudication relates entirely to questions of law, and is confined in its operation to subsequent proceedings in the case. Whatever is established as the controlling legal rule of decision, between the same parties in the same case, continues to be the law of the case, so long as there is a similarity of facts. This principle expresses the practice of courts generally to refuse to reopen what has previously been decided. It is founded on public policy and the

interest of orderly and consistent judicial procedure. See, Moeller v. Am. Guarantee and Liab. Ins. Co., 812 So. 2d 953, 960 (Miss. 2002).

The COA had before it the exact same argument before it that the Mississippi Supreme Court had before it on the application to leave. Nothing changed. Therefore, the COA's affirmation was an error in law and contrary to Lewis and its line of case laws.

B.) The COA's ruling is also in conflict with Hymes v. State, 703 So. 2d 258, 260 (Miss. 1997) and its line of cases which has held that a grant of leave is a prima facie case of the petitioner's claim.

C.) The COA's ruling is in conflict with Mayor and Board of Alderman, City of Ocean Springs v. Homebuilders Association of Mississippi, Inc, et al. 932 So. 2d 44, 59 (¶ 61) (Miss. 2006) which has held. "The doctrine of collateral estoppel serves a dual purpose. It protects litigants from the burden of relitigating an identical issue with same party or his privy "and" it promotes judicial economy by preventing needless litigation." Id.

D.) The COA's ruling is in conflict with Ford v. State, 708 So. 2d 73, 75 (Miss. 1982) and its line of cases. In Walton v. State, 752 So. 2d 452, 457 (Miss. 1999) the court stated, "In addition to the aforementioned caselaw, the failure of Walton to attach supporting affidavits fail 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 that there are no affidavits does not automatically render the motion invalid." Id. citing Ford v. State, 708 So. 2d 73, 75 (Miss. 1998).

E.) The COA's ruling is in conflict with Mosley v. State, 749 So. 2d 286, 288 (¶ Miss. 1999). Without doubt, the trial attorney did not know the laws of Mississippi as they applied to the appellants case. The trial transcript shows that the trial attorney thought that if he showed that the appellant did not intentionally shoot the victim that the appellant wasn't guilty of murder. However, the trial attorney was wrong as a matter of law. The record goes on to show that the trial attorney proffered an accidental instruction base on his legal incorrect theory, in which the trial court properly rejected, but the trial attorney's aggressive assertion that this was an accidental shooting

didn't end in the trial court as he furthered argued this issue all the way up to writ of cert. in which both the COA and the Supreme Court properly rejected. Therefore, all the courts that this case has come before has already held the trial attorney in error of law. In other words, the appellant do not rely on only his affidavit, but in the most part on the transcripts, proffered jury instructions, prior pleading before the courts by the trial attorney and all the courts rejections of the trial attorney's "accidental defense" in which laid the sole foundation for the rejection of the manslaughter plea by the appellant.

One case from the Mosley line states, "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 deny relief without the necessity of a hearing. Miss. Code Ann. 99-39-11 (2) (Rev. 2000); 841 So. 2d 207, 212 (Miss.); citing Robinson v. State, 809 So. 2d 734, 736 (¶ 17) (Miss. 2002); Mosley v. State, 749 So. 2d 286, 288 (¶ 11) (Miss. 1999).

The above case laws create other options in which a petitioner may prove their theory. The words either and or are dysjunctions. According to the above case laws "supporting affidavits" are not the only options in which a petitioner may prove his theory. It's just one of several options.

As the above case laws are applied to the appellant's case he relied heavily upon the "other satisfactory means," portion of the law. Specific the court records and prior court rulings on the issue of accidental defense.

### REASON TWO

The COA failed to answer the question of "whether the trial erred by applying Strickland to the trial rather than the plea stage. Case law has held that "The Sixth Amendment safeguards to an accused who faces incarceration the right to counsel at all critical stages of the criminal process." See, Iowa v. Tovar, 541 U.S. 77, 80-81 (2004) citing; Maine v. Moulton, 474 U.S. 159, 170 (1985); United States v. Wade, 388 U.S. 218, 224 (1977) and that "a plea hearing qualifies as a critical stage," Iowa at 87 citing; White v. Maryland, 373 U.S. at 60 and "it has long been recognized that the right to



counsel is the right to effective of counsel". See, U.S. v. Cronin, 466 U.S. 648, 655 (1984); citing McMann v. Richardson, 397 U.S. 759, 771 (1970).

The appellant now raise the question again of "whether the trial court erred by applying Strickland to the trial rather than the plea for clarity on remand if this Great Court so order.

### CONCLUSION

The record has shown that the trial attorney was in error of law. However, an evidentiary hearing is necessary to determine what degree of prejudice the appellant suffered. It is unrealistic to think that the petitioner, who is illiterate, incarcerated and indigent can secure an affidavit from an attorney who may be incarcerated, or from his former prosecutor. Despite the fact that it was an unrealistic task, never-the-less he has done all that he could to secure affidavits.

It has been the observation of this author that trial attorneys and former prosecutor don't go around given affidavits (no matter how justifiable) to indigent convicts out the kindness of their hearts. Therefore, the only logical realistic way to get to the truth of the matter is through subpoena, testimonies under the penalty of perjury and discovery.

### REMEDY SOUGHT

The petitioner ask this Great Court to reverse and remand this case back to the trial court with instructions to: 1) assign an attorney to assist the appellant pursuant to Miss. Code Ann. 99-15-15, to secure the attorney and the former prosecutor to testify, 2) allow discovery to be taken, 3) instruct the trial court to determine the Strickland prongs on the plea and not the trial stage.

Respectfully Submitted,

Nathaniel Walden

Nathaniel Walden #124890 prose  
MSP, Unit 30-D  
Parchman, MS 38738

CERTIFICATE OF SERVICE

I, Nathaniel Walden, aver that a copy of the above Petition For Writ of Certiorari was delivered via United States Postal Service, postage prepaid, to :

HON. JIM HOOD  
ATTORNEY GENERAL  
STATE OF MISSISSIPPI  
POST OFFICE BOX 220  
JACKSON, MS 39205-0220

CERTIFIED this the 12 day of June, A.D., 2016.

By: Nathaniel Walden  
Nathaniel Walden #124890  
Pro Se Petitioner  
MSP, Unit 30-D, A-Zone  
Parchman, MS 38738

Test 2

Test Report for WALDEN NATHANIE

ID Number: 124890  
 Test Date: 04/02/15  
 Run Date: 04/02/15

Epps  
 TABE 9/10 Basic Ed

Subtests	L/F	NC	NA	SS	GE	NP	NRS	NS	OM	Predicted GED
Reading	E0	15	50	317	1.4	5	1	5	0	
Math Compn	E0	30	40	433	3.8	19		5	60	
Applied Math	E0	15	50	364	2.2	6		5	0	
Language	E0	18	55	401	2.1	11	2	5	0	
Vocabulary	E0	6	20	339	1.7	6		5	0	
Lang Mech	E0	4	20	235	0.0	1		5	0	
Spelling	E0	3	20	220	0.0	1		5	0	

EX. A

Subtest Avg: 15 48 324 1.9 10 2 5  
 Total Score: 78 146 312 1.2 5 5

Legend: NC=No. Correct NA=No. Attempted  
 GE=Grade Equiv NP=National tile  
 NRS=National Stan OM=Obj. Mastered

Subtest	Score	MST	Percent	Objectives	Score	MST	Percent
				Language			
Reading	3/10	-	30	E30 USAGE	4/12	-	33
Math Compn	1/ 8	-	13	E31 SENT FORMA	3/ 9	-	33
Applied Math	2/14	-	14	E32 PARA DEVEL	3/ 8	-	37
Language	2/14	-	14	E33 CAPITALIZ	4/10	-	40
Vocabulary	3/ 7	-	43	E34 PUNCTUATION	3/10	-	30
Lang Mech		-	0	E35 WRITG CONV	1/ 8	-	16
Spelling		-	0	Subtest Avg			33
				Vocabulary			
Reading	0/ 9	-	0	E40 WD MEANING	4/ 9	-	44
Math Compn	4/ 8	P	50	E41 MULTIMNG WD	1/ 4	-	25
Applied Math	0/ 8	-	0	E42 WD IN CONTX	1/ 7	-	14
Language	1/ 8	-	13	Subtest Avg			30
Vocabulary	0/ 7	-	0				
				Lang Mech			
Reading		-	0	E43 SENT PHRASE	1/ 9	-	12
Math Compn	4/10	-	40	E44 WRITG CONV	3/12	-	25
Applied Math	1/ 7	-	14	Subtest Avg			20
Language	0/ 5	-	0				
Vocabulary	0/ 5	-	0	Spelling			
Lang Mech	1/ 4	-	25	E45 VOWEL	2/ 8	-	28
Spelling		-	0	E46 CONSONANT	1/ 8	-	16
Reading	1/ 8	-	13	E47 STRUCT UNIT	0/ 7	-	0
Math Compn	1/ 4	-	25	Subtest Avg			16
Applied Math	1/ 8	P	13				
Language	0/ 7	-	0	Total Average			36
Vocabulary	0/ 7	-	0				
Lang Mech		-	0				
Spelling		-	0				