IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2021-CP-01149-COA

Consolidated with:
2019-CT-01735-COA

ADAM BRENT WALLACE **APPELLANT**

v.

STATE OF MISSISSIPPI **APPELLEE**

DATE OF JUDGMENT:	10/11/2021
TRIAL JUDGE:	HON. PRENTISS GREENE HARRELL
COURT FROM WHICH APPEALED:	LAMAR COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	ADAM BRENT WALLACE (PRO SE)
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: ALEXANDRA LEBRON
NATURE OF THE CASE:	CIVIL - POST-CONVICTION RELIEF
DISPOSITION	AFFIRMED - 11/01/2022
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

BEFORE CARLTON, P.J., GREENLEE AND McCARTY, JJ.

CARLTON, P.J., FOR THE COURT:

¶1. In May 2014, a Lamar County grand jury indicted Adam Brent Wallace on one count of child exploitation occurring "on or about 24 March 2011," in violation of Mississippi Code Annotated section 97-5-33(5) (Supp. 2007). On September 28, 2018, Wallace pleaded guilty to that charge. The Lamar County Circuit Court sentenced Wallace to a term of ten years in the custody of the Mississippi Department of Corrections (MDOC), with five years to serve and five years suspended on post-release supervision. Wallace, pro se, filed his first petition for post-conviction collateral relief (PCR) in 2018, which the circuit court summarily

dismissed. Wallace appealed and this Court affirmed the circuit court's dismissal of Wallace's first PCR petition. *Wallace v. State*, 312 So. 3d 1202, 1205 (¶10) (Miss. Ct. App. 2020), *cert. denied*, 312 So. 3d 729 (Miss. 2021) (*Wallace I*).

¶2. In June 2021, Wallace filed his second PCR petition, which the circuit court also summarily dismissed. Wallace now appeals the dismissal of his second PCR petition. Restated for clarity, Wallace raises the following issues: (1) his guilty plea was without a factual basis and was involuntary; (2) the indictment was defective for failure to include the essential elements of the crime charged; and (3) his plea counsel was ineffective because he failed to object to the State's proffered evidence or raise a speedy-trial claim. Finding no error, we affirm the circuit court's dismissal of Wallace's second PCR petition.

PROCEDURAL HISTORY AND STATEMENT OF FACTS

¶3. On May 22, 2014, Wallace was indicted by a Lamar County grand jury on one count of child exploitation pursuant to section 97-5-33(5). The record reflects that at the time he was indicted, Wallace was incarcerated in a federal prison on different charges. At Wallace's plea hearing, his attorney explained to the trial court that Wallace had been released from federal custody directly to Lamar County on April 6, 2018, and held in the Lamar County jail. Wallace's guilty plea hearing was held on September 28, 2018.

¶4. After conducting Wallace's plea hearing, the trial court accepted his guilty plea. Details of Wallace's guilty plea petition and the plea colloquy are discussed below. The court sentenced Wallace to ten years, with five years to serve and five years suspended on

post-release supervision.

¶5. Wallace filed his first PCR petition in 2018, followed by supplemental filings, in which he asserted:

> (1) the circuit court violated his rights by failing to rule on his pre-trial motions for a speedy trial violation, suppressing evidence and statements, and infringing his right to self-representation; (2) his guilty plea was not voluntary because he entered his plea based upon a recommendation from the State that contained an illegal sentence; and (3) the Jefferson Davis County Circuit Court lacked jurisdiction to accept his plea.

Wallace I, 312 So. 3d at 1203 (¶1). The circuit court denied and summarily dismissed Wallace's PCR petition pursuant to Mississippi Code Annotated section 99-39-11(2) (Rev. 2015). *Id.* On appeal, Wallace challenged only the "illegal sentence recommendation." *Id.* "Finding no error, [this Court] affirmed the circuit court's judgment." *Id.*

¶6. Wallace then filed his second PCR petition, which is the subject of this appeal. Following the filing of his second PCR petition, Wallace filed two more supplemental PCR petitions and a supporting memorandum. The circuit court treated all of Wallace's filings as his second PCR petition. Wallace asserted that: (1) his sentence had expired; (2) he was denied the right to counsel in that he received "no meaningful assistance" from his attorney and his attorney did not "assert a constitutional right to [a] speedy trial claim"; (3) the trial court failed to place the State's sentence recommendation on the record in violation of Mississippi Rule of Criminal Procedure 15.4(b); (4) there was no factual basis to support his guilty plea and it was not voluntary; and (5) the indictment was defective for failure to allege

an essential element of the crime.[1]

¶7. On October 11, 2021, the circuit court denied and summarily dismissed Wallace's second PCR petition under section 99-39-11(2).[2] Relating to the issues Wallace now raises on appeal, the circuit court found that Wallace's guilty plea was supported by a factual basis, including the facts presented by the State at Wallace's plea hearing, the wording of the indictment, and Wallace's affirmations under oath with respect to this information. Additionally, the circuit court found that Wallace entered his plea voluntarily, knowingly, and intelligently as shown by the plea hearing transcript.

¶8. Regarding Wallace's indictment, the circuit court found that it was not defective, but

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[1] On appeal, Wallace does not assert two claims that he raised in his second PCR petition, namely, that "his sentence had expired" and that "the circuit court failed to place the State's sentence recommendation on the record in violation of MRCrP 15.4(b)." These issues are therefore abandoned and waived on appeal. *Arrington v. State*, 267 So. 3d 753, 756 (¶8) (Miss. 2019) ("The law is well established that points not argued in the brief on appeal are abandoned and waived.").

[2] The circuit court's October 11, 2021 order denying Wallace's second PCR petition does not fully comply with Mississippi Rule of Civil Procedure 54(c). Effective July 1, 2018, Rule 54(c) requires that when a PCR petition is summarily dismissed pursuant to section 99-39-11(2), "the order must identify the files, records, transcripts, and correspondence the court relied on and direct that certified copies of those documents be placed in the motion cause number's file." Although the circuit court's order details the "files, records, transcripts, and correspondence the court relied on" in rendering its decision, the order does not "direct that certified copies of those documents be placed in the [PCR] motion cause number's file." M.R.C.P. 54(c). We find, however, that the circuit court's failure to strictly comply with Rule 54(c) was harmless error because the relevant information is included in the appellate record. We have ordered that the appellate record relating to Wallace's appeal of his first unsuccessful PCR petition, docketed as *Wallace v. State*, 2019-CP-01735-COA, be consolidated with this appeal for record purposes only. Order, *Wallace v. State*, 2021-CP-01149-COA (Miss. Ct. App. Sept. 8, 2022).

rather it "tracks with the [child exploitation] statute and satisfies the requirements of MRCrP Rule 14.l(a)," and "Wallace affirmed during his plea that he had read and understood the charge against him."

¶9. Lastly, the circuit court found that Wallace's ineffective-assistance-of-counsel claim was barred as a successive writ and no exception applied. The circuit court also found that this claim failed on the merits because Wallace made no argument "that 'but for' his attorney's performance he suffered prejudice, nor that he would not have entered a plea," he attached no corroborating affidavit(s) to his PCR petition to support his claim, and he "contradict[ed] his claim by his sworn answers in his plea colloquy[.]"

¶10. Wallace appeals.

STANDARD OF REVIEW

¶11. "A trial court's denial of a motion for post-conviction relief will not be reversed unless the trial court's decision was clearly erroneous." *Wallace I*, 312 So. 3d at 1204 (¶4). This Court reviews questions of law de novo. *Id.*

DISCUSSION

I. Successive Writ

¶12. This appeal stems from the dismissal of Wallace's second PCR petition related to the guilty plea Wallace entered on the child exploitation charge against him. The Uniform Post-Conviction Collateral Relief Act (UPCCRA) prohibits the filing of a successive motion, as follows: "[A]ny order dismissing the petitioner's motion or otherwise denying relief under

this article is a final judgment and shall be conclusive until reversed. *It shall be a bar to a second or successive motion under this article.*" Miss. Code Ann. § 99-39-23(6) (Rev. 2020) (emphasis added). As the petitioner, Wallace must prove "by a preponderance of the evidence that his claims are not barred as successive writs." *Salter v. State*, 184 So. 3d 944, 948 (¶14) (Miss. Ct. App. 2015); Miss. Code Ann. § 99-39-23(7).

¶13. The PCR petition that is the subject of this appeal is Wallace's second PCR petition and is plainly successive. Further, each of the issues that Wallace raised in this successive petition could have been raised in his first PCR petition. For this reason, these issues are also "barred by ordinary principles of res judicata[.]" *Harris v. State*, 313 So. 3d 500, 506 (¶17) (Miss. Ct. App. 2020). As this Court has explained, "since successive motions are not allowed, 'a person who requests post[-]conviction relief is obligated to place before the court all claims known to him and/or of which he should have had knowledge.'" *Id.* (quoting *Nichols v. State*, 265 So. 3d 1239, 1241 (¶8) (Miss. Ct. App. 2018)). "The failure to do so results in a loss of his claims for a second or successive petition." *Id.*

¶14. We acknowledge, however, that "errors affecting fundamental rights may be excepted from procedural bars," *Reardon v. State*, 341 So. 3d 1004, 1011 (¶23) (Miss. Ct. App. 2022) (quoting *Rowland v. State*, 42 So. 3d 503, 505-06 (¶7) (Miss. 2010)), including "the right to be free from an illegal sentence," and, "in extraordinary circumstances, the right to effective assistance of counsel[.]" *Id.* (quoting *Creel v. State*, 305 So. 3d 417, 421 (¶9) (Miss. Ct. App. 2020)). Wallace asserts that his sentence is "illegal" because his guilty plea was

"without a factual basis" and involuntary. Wallace also asserts that his indictment failed to charge essential elements of the child exploitation charge against him. Lastly, Wallace asserts he received ineffective assistance of counsel. We address each of these assertions in turn.

II. Wallace's Guilty Plea

¶15. Wallace asserts that there was no factual basis for his guilty plea and that it was involuntary. *See* MRCrP 15.3(c) ("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."). We find that both assertions are without merit for the reasons addressed below.

A. Factual Basis Supporting the Guilty Plea

¶16. "A factual basis for a guilty plea may be established in a number of ways, including by a statement of the prosecutor . . . as well as an actual admission by the defendant[.]" *Turner v. State*, 864 So. 2d 288, 292 (¶17) (Miss. Ct. App. 2003). Also, if the indictment is sufficiently specific, it can provide the sole source of the factual basis for a guilty plea. *Woods v. State*, 302 So. 3d 218, 220 (¶8) (Miss. Ct. App. 2020). This Court considers the entire record in considering whether a factual basis exists. *Williams v. State*, 110 So. 3d 840, 843 (¶17) (Miss. Ct. App. 2013).

¶17. We find that a sufficient factual basis supporting Wallace's guilty plea was established in three ways: (1) the wording of the indictment; (2) the statement of the prosecutor regarding

the expected evidence in this case; and (3) Wallace's own admission at his plea hearing.

¶18. Wallace was charged with child exploitation under section 97-5-33(5), which, at the time of the crime, provided that "[n]o person shall, by any means including computer, possess any photograph, drawing, sketch, film, video tape or other visual depiction of an actual child engaging in sexually explicit conduct."[3] The indictment details the crime of child exploitation specifically relating to Wallace, as follows:

> On or about 24 March 2011, in Lamar County, Mississippi and within the jurisdiction of this court, [Wallace] did willfully, unlawfully and feloniously possess visual depictions of actual children, under the age of eighteen years, engaging in sexually explicit conduct . . . on a Samsung hard drive, model number HM250H1, serial number S20TJD0S956723, all in violation of § 97-5-33(5) of the Mississippi Code[.]

¶19. At Wallace's plea hearing, the prosecutor read the above charge aloud and then stated more specifically that if the case went to trial

> the State would call Investigator Richard Johnson, with the Mississippi Attorney General's office, and also the FBI Child Exploitation Task Force will be expected to testify. We conducted an undercover investigation of individuals . . . possessing child pornography in the State. And upon execution of a search warrant at the defendant's house, we did find that Samsung hard drive that contained child pornography. Furthermore, the State would be expected to call Vicky Roberts with the FBI who was a computer forensic computer examiner, whose expected testimony would be that she conducted

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[3] Wallace was charged with exploitation of a minor "on or about 24 March 2011" in violation of Mississippi Code Annotated section 97-5-33(5). "Effective July 1, 2013, this section was amended to read: 'No person shall, by any means including computer, *knowingly possess or knowingly access with intent to view* any photograph, drawing, sketch, film, video tape or other visual depiction of an actual child engaging in sexually explicit conduct.'" *Ishee v. State*, 248 So. 3d 841, 843 (¶4) (Miss. Ct. App. 2017) (quoting Miss. Code Ann. § 97-5-33(5) (Rev. 2014)).

> a computer forensic exam on a hard drive contained in the indictment, and that her expected testimony would be that she found child pornography on that hard drive as well.

¶20. Finally, as the circuit court found, "[d]uring his plea, Wallace affirmed under oath that he had read and understood the charge against him." Wallace also confirmed "that he was pleading guilty to possession of visual depictions of actual children under the age of eighteen years engaging in sexually explicit conduct because he was guilty, and that the facts stated in the charge and in the State's proffer were true and correct."

¶21. These three sources provide a factual basis for Wallace's guilty plea. Wallace, however, asserts that the "Samsung hard drive" referenced in the indictment and in the prosecutor's statement of supporting facts was not listed on the search warrant return, and thus his guilty plea is without a factual basis. We reject this contention. The return listed the Samsung notebook computer in the inventory of items taken pursuant to the search warrant. It is clear from the circumstances that this notebook computer's hard drive is the hard drive at issue, and Wallace provides no basis for believing otherwise. His argument is without merit.

¶22. In sum, we find that the indictment, the statement by the prosecutor, and Wallace's own admissions amply establish the factual basis for Wallace's guilty plea. *Waters v. State*, 309 So. 3d 39, 42 (¶5) (Miss. Ct. App. 2020) (prosecutor's statement, together with defendant's admissions, provided sufficient factual basis for defendant's guilty plea), *cert. denied*, 314 So. 3d 1162 (Miss. 2021); *Turner*, 864 So. 2d at 292 (¶17). We find that

Wallace's assertion that his guilty plea lacks a sufficient factual basis is without merit.

B. Involuntary Guilty Plea

¶23. "[I]nvoluntary-guilty-plea claims do not fall under the fundamental-rights exception." *Hodgin v. State*, 328 So. 3d 1279, 1281 (¶8) (Miss. Ct. App. 2021) (quoting *Johnson v. State*, 313 So. 3d 1104, 1105 (¶5) (Miss. Ct. App. 2021)). Further, Wallace's challenge to the voluntariness of his plea is barred by res judicata. Wallace raised this issue in his first PCR petition, and his challenge was dismissed by the circuit court. *Wallace I*, 312 So. 3d at 1203 (¶1). Wallace abandoned the issue on appeal. *Id.* He is therefore barred from re-raising here. *See Harris*, 313 So. 3d at 506 (¶17).

¶24. Procedural bar aside, we also find that Wallace's involuntary-guilty-plea claim is without merit. "A guilty plea is binding if entered voluntarily, knowingly, and intelligently." *Tanner v. State*, 332 So. 3d 382, 387 (¶13) (Miss. Ct. App. 2022). This essentially means that the defendant is "advised concerning the nature of the charge against him and the consequences of the plea." *Id.* Wallace, as the petitioner, "bears the burden of proving by a preponderance of the evidence that his plea was involuntarily entered." *Id.* We find that Wallace has failed to meet this burden here.

¶25. In this case, the trial court engaged Wallace in an extensive plea colloquy before accepting his guilty plea. The trial judge thoroughly explained the charge and the possible sentence to Wallace, and to ensure that Wallace understood, he specifically asked Wallace what sentence he could get. Wallace correctly replied, "5 to 40 years." The trial court

detailed the constitutional rights Wallace would be foregoing if he chose to plead guilty, explaining to Wallace that he was entitled to a "public, speedy, [and] fair" jury trial in which he would be presumed innocent, he would have the right to confront the witnesses against him, and the State would have the burden of proving he was guilty beyond a reasonable doubt. The court also told Wallace that he could choose to testify at trial, but if he chose not to do so, the jury would be instructed that this could not be used as evidence of his guilt. Additionally, the trial court informed Wallace that if he were found guilty, he had the right to appeal.

¶26. Wallace acknowledged under oath that he understood each of these points; the nature of the charge against him; and the consequences of his guilty plea. He also confirmed that he had reviewed the case with his attorney and thought the plea was his best option; he had not been threatened, bribed, or coerced to plead guilty; and he was pleading guilty because he committed the crime charged.

¶27. In short, Wallace's bare assertion that his guilty plea was involuntary does not overcome the detailed interrogation by the trial court during the plea colloquy and Wallace's own admissions made under oath and in his plea petition. *Wood v. State*, 291 So. 3d 830, 841 (¶35) (Miss. Ct. App. 2020) (observing that "in assessing the voluntariness of a plea, the thoroughness of the trial court's interrogation during the plea colloquy is the most significant evidence of all"). We therefore find that Wallace has failed to show his guilty plea was involuntary. This issue is without merit.

III. Sufficiency of the Indictment

¶28. Wallace asserts that the indictment against him was defective because it failed to include essential elements of the crime charged. Specifically, Wallace asserts that the indictment does not include (1) the minor victims' names, (2) the victims' genders, or (3) a "description of the actual explicit conduct that was depicted." In a supplement to his brief, Wallace also asserts that the indictment fails to include the "time when the alleged offense occurred."

¶29. Although "claims alleging a defective indictment are subject to the UPCCRA's procedural bars," *Pickle v. State*, 306 So. 3d 771, 775 (¶7) (Miss. Ct. App. 2020), *cert. denied*, 141 S.Ct. 1256 (2021), this does not preclude a petitioner from asserting that the "indictment failed to allege an essential element of the crime[.]" *Id.*; *Dever v. State*, 210 So. 3d 977, 981 (¶12) (Miss. Ct. App. 2017) (recognizing that "claims [that an indictment fails to charge the defendant with a crime] implicate a fundamental constitutional right and, if meritorious, would be excepted from the procedural bar"). Additionally, "a valid guilty plea will 'not waive the defendant's right to assert that the indictment fails to charge an essential element of the crime.'" *Jenkins v. State*, 325 So. 3d 1195, 1198 (¶10) (Miss. Ct. App. 2021) (quoting *Carter v. State*, 204 So. 3d 791, 795 (¶18) (Miss. Ct. App. 2016)). As discussed below, however, we find that the omissions Wallace describes are not essential elements of the crime of child exploitation. We therefore find that this issue is both procedurally barred and without merit.

¶30. "An indictment must contain (1) the essential elements of the offense charged, (2) sufficient facts to fairly inform the defendant of the charge against which he must defend, and (3) sufficient facts to enable him to plead double jeopardy in the event of a future prosecution for the same offense." *Cotten v. State*, 202 So. 3d 216, 219 (¶7) (Miss. Ct. App. 2016). "Where an indictment tracks the language of the statute, the indictment sufficiently puts the defendant on notice of the charges against him in order to prepare his defense." *Jenkins*, 325 So. 3d at 1199 (¶12).

¶31. As noted above, Wallace was indicted in 2011 for child exploitation under section 97-5-33(5), which provided at that time that "[n]o person shall, by any means including computer, possess any photograph, drawing, sketch, film, video tape or other visual depiction of an actual child engaging in sexually explicit conduct." For purposes of the crime of child exploitation, a "child" is "any individual who has not attained the age of eighteen (18) years." Miss. Code Ann. § 97-5-31(1) (Rev. 2004).

¶32. Wallace's indictment provided that "[o]n or about 24 March 2011, . . . [Wallace] did willfully, unlawfully and feloniously possess visual depictions of actual children, under the age of eighteen years, engaging in sexually explicit conduct[.]" Specifically, the indictment provided that Wallace "did possess visual depictions of actual children, under the age of eighteen years, engaging in sexually explicit conduct on a Samsung hard drive, model number HM250Hl, serial number S20TJD0S956723, all in violation of [section 97-5-33(5)]."

¶33. We find that Wallace's indictment sufficiently tracked the language of the statute and

contained all the essential elements of the crime. *See Dever*, 210 So. 3d at 981 (¶14) (finding that an indictment tracking the applicable version of section 97-5-33(5) sufficiently charged defendant with child exploitation); *see also Cotten*, 202 So. 3d at 219 (¶11). The indictment specified the date (on or around March 24, 2011) that the children in the visual depictions were under the age of eighteen years, and that images depicted children engaging in sexually explicit conduct.

¶34. The "essential elements" that Wallace claims are lacking—the victims' names and genders, a "description of the actual explicit conduct that was depicted," and the precise "time when the offense was alleged to have been committed"—are not required under section 97-5-33(5). Accordingly, they are not "essential elements" of the crime of child exploitation. *Cotten*, 202 So. 3d at 219 (¶11) (recognizing that "the name of the child is not required under section 97-5-33 [and thus] . . . is not an essential element of the crime of exploitation of children under section 97-5-33"); *see Tallant v. State*, 345 So. 3d 575, 591-92 (¶47) (Miss. Ct. App. 2021), *cert. denied*, 344 So. 3d 278 (Miss. 2022) (finding that the defendant charged with transmitting child pornography was not entitled to have the names of the children depicted set forth in the indictment).

¶35. Wallace relies on Rule 7.06(5) of the former Uniform Rules of Circuit and County Court Practice (URCCC) for his assertion that the specific "time of the offense" must be

included in the indictment.[4] But Rule 7.06(5) merely said that the indictment should contain "[t]he date and, *if applicable*, the time at which the offense was alleged." (Emphasis added). In this case, the "time" of the offense is not applicable because nowhere in section 97-5-33(5) is the time required.

¶36. Wallace also asserts that by not identifying the minor children in the indictment, the State failed to provide sufficient facts to inform him of the charge and to enable him to plead double jeopardy should he face the threat of future prosecution for the same crime. But Wallace never challenged the sufficiency of his indictment based upon these assertions before the trial court. He may not raise them for the first time here: "A trial judge cannot be put in error on a matter which was not presented to him for decision." *Rollings v. State*, 192 So. 3d 1133, 1136 (¶15) (Miss. Ct. App. 2016) (quoting *Ponder v. State*, 335 So. 2d 885, 886 (Miss. 1976)). The issue is therefore procedurally barred. *Id.*

¶37. In any event, as we have addressed above, we find that Wallace's indictment did contain the essential facts to fully notify him of the charge against him. Indeed, at his plea hearing, Wallace confirmed that he had read and understood the charge against him. We likewise find that sufficient facts were alleged to allow him to plead double jeopardy in the event of future prosecution. The indictment identified the date of the offense and identified

[4] The Uniform Rules of Circuit and County Court Practice no longer govern criminal practice in Mississippi and were replaced by the Mississippi Rules of Criminal Procedure, effective July 1, 2017. The Uniform Rules of Circuit and County Court Practice for civil practice were recodified in the Uniform Civil Rules of Circuit and County Court Practice.

the hard drive by serial number that contained the depictions of the minors engaged in sexually explicit conduct. In *Bevalaque v. State*, 337 So. 3d 691(Miss. Ct. App. 2022), this Court found that multiple counts of child exploitation did not violate the defendant's double jeopardy rights because the separate counts were based upon "*multiple disks and devices that each individually warranted a charge of child exploitation.*" *Id.* at 697 (¶24) (emphasis added). Likewise, Wallace's *single* child exploitation charge is based upon the depictions contained on the hard drive identified in the indictment—not the particular children in the depictions. Wallace is not entitled to the names of the minor victims. *Tallant*, 345 So. 3d at 591-92 (¶47). We find that his "double jeopardy" contention is without merit.

¶38. For all the reasons discussed above, we find that Wallace's defective-indictment assignment of error is without merit.

IV. Ineffective Assistance of Counsel

¶39. Wallace asserts that he was provided ineffective assistance of counsel at his plea hearing because his attorney (1) failed to object to the State's proffered evidence as being obtained under a search warrant lacking probable cause; and (2) failed to raise a speedy-trial claim. "[U]nder 'extraordinary circumstances,' ineffective assistance of counsel can also constitute an exception to the procedural bars of the UPCCRA." *Figueroa v. State*, 319 So. 3d 1151, 1155 (¶17) (Miss. Ct. App. 2020), *cert. dismissed*, 318 So. 3d 484 (Miss. 2021). As discussed below, we find that Wallace his failed to show that any such "extraordinary circumstances" exist here.

A. Failed to Raise the Claim in the Circuit Court

¶40. First, our review of the record reveals that Wallace never raised before the circuit court an ineffective-assistance-of-counsel claim based upon his attorney's failure to object to the State's proffered evidence as being obtained under a search warrant lacking probable cause. No mention was made of this issue in Wallace's second PCR petition and related filings, nor did Wallace raise it at his plea hearing. Although Wallace asserted that there were certain deficiencies in the search warrant *return* (unrelated to his attorney's purported deficient representation), Wallace did not assert that the search warrant lacked probable cause, or that his attorney was ineffective for failing to raise this issue. Indeed, only the return—and not the search warrant itself—was attached to Wallace's second PCR petition and related filings. The search warrant is not in the appellate record.[5] We cannot find the circuit court in error for a matter that was not presented to it for decision. *Rollings*, 192 So. 3d at 1136 (¶15); *Nance v. State*, 766 So. 2d 111, 113 (¶8) (Miss. Ct. App. 2000) (recognizing that because the defendant "did not raise this issue below, he may not now 'plow new ground on appeal' of his PCR petition . . . . This ground is without merit."

[5] After briefing was completed, Wallace attempted to supplement his record excerpts with the search warrant, among other items. This Court denied his motion, finding, with respect to the search warrant, "that [t]here is no express indication that the circuit court reviewed [the search warrant] before summarily dismissing the PCR motion that led to Wallace's current appeal." Order, *Wallace v. State*, 2021-CP-01149-COA (Sept. 8, 2022). On the Court's own motion, we ordered that "the record related to the current appeal shall be consolidated with the appellate record in the earlier appeal styled as *Wallace v. State*, 2019-CP-01735-COA," *id.*, which also did not contain the search warrant.

(quoting *Taylor v. State*, 682 So. 2d 359, 362 (Miss. 1996))). Accordingly, we reject Wallace's ineffective-assistance-of-counsel claim based upon his attorney's alleged failure to object to the State's proffered evidence as being obtained under a purportedly invalid search warrant.

B. Guilty Plea Made Voluntarily, Knowingly, and Intelligently

¶41. Second, we have already concluded that Wallace entered his guilty plea voluntarily, knowingly, and intelligently. "A voluntary guilty plea waives claims of ineffective assistance of counsel 'except insofar as the alleged ineffectiveness related to the voluntariness of the giving of the guilty plea.'" *Jones v. State*, 284 So. 3d 855, 859 (¶12) (Miss. Ct. App. 2019) (quoting *Rigdon v. State*, 126 So. 3d 931, 936 (¶16) (Miss. Ct. App. 2013)). To show this, Wallace "must demonstrate that his counsel's conduct proximately resulted in the guilty plea, and that but for counsel's errors, he would not have entered the plea." *Bell v. State*, 310 So. 3d 837, 840 (¶7) (Miss. Ct. App. 2021) (quoting *Thomas v. State*, 159 So. 3d 1212, 1215 (¶10) (Miss. Ct. App. 2015)). In order to do so, Wallace must provide "more than [his] own affidavit or mere assertions made within his brief." *Figueroa*, 319 So. 3d at 1156 (¶18) (quoting *McCoy v. State*, 111 So. 3d 673, 679 (¶21) (Miss. Ct. App. 2012)). Wallace's ineffective-assistance-of-counsel claim "must be pled with specificity, and the claim must be supported by affidavits other than his own." *Id.* (quoting *Moore v. State*, 248 So. 3d 845, 851 (¶15) (Miss. Ct. App. 2017)).

¶42. We find that Wallace has wholly failed to meet his burden of demonstrating that he

would not have entered his guilty plea but for his attorney's purported errors. *Jones*, 284 So. 3d at 859 (¶12). We therefore find that by entering his voluntary guilty plea, Wallace has waived his ineffective-assistance-of-counsel claim on both grounds.

¶43. Wallace offers only the averments in his "statement of the specific facts which are within [his] personal knowledge" to support his ineffective-assistance-of-counsel claim. And even with respect to that statement, nowhere did Wallace state that his attorney's alleged errors "proximately resulted in [his] guilty plea" and "that but for [his attorney's alleged] errors, he would not have entered the plea." *See Bell*, 310 So. 3d at 840 (¶7). Nor does the record contain any other sworn testimony or statement by Wallace, or anyone else, to this effect.[6] Although Wallace now makes such assertions in his brief, these carry no weight at all. *Figueroa*, 319 So. 3d at 1156 (¶18).

¶44. Indeed, the record contradicts any such assertions. In our review of the consolidated appellate record, we find that Wallace, pro se, filed several speedy trial motions in his underlying criminal case, as well as motions to suppress the evidence obtained through the subject search warrant. Thus, he knew such purported defenses existed. More importantly, Wallace confirmed in his signed and sworn guilty plea petition that his attorney had

[6] Wallace's statement in his second PCR petition merely provides that his attorney "just stood there and did nothing while [he] was entering a plea," "[a]fter the plea but before the sentence . . . counsel then wanted to discuss possible defenses with [him]" (a statement directly contradicted in Wallace's signed and sworn guilty plea petition), and that his attorney "refused to assert a constitutional right to speedy trial claim." No mention at all was made of his attorney's purported failure to object to the State's proffered evidence as obtained by a search warrant unsupported by probable cause.

"counseled and advised [him] . . . on all possible defenses [he] might have" to the charge against him, and his guilty plea was entered "freely and voluntarily, of [his] own accord," as follows:

> I have told my attorney all of the facts and circumstances known to me about the charge(s) against me. I believe that my attorney is fully informed on all matters. *My attorney has counseled and advised me on the nature of each charge, on all lesser included charge(s), and on all possible defenses I might have to these charges*. *I am satisfied with the advice my attorney has given me.* After consulting with my attorney, I am entering my plea of "GUILTY" freely and voluntarily, of my own accord and with my full understanding of all matters set forth in the Indictment, in this Petition, and the Certificate of Attorney which is included at the end of this Petition.

(Emphasis added).

¶45. Wallace's sworn in-court statements also support the voluntary nature of his guilty plea. At his plea hearing, Wallace confirmed that his attorney went over his petition to plead guilty with him so that he thoroughly understood it; he had confidence in his attorney's representation; he was satisfied with what his attorney had done for him; and no one had pressured, threatened, or promised him anything to get him to plead guilty. Wallace also confirmed that he understood that by entering a guilty plea he was waiving his right to a "public, speedy, [and] fair" jury trial. "Statements made in open court under oath carry a strong presumption of veracity." *Chandler v. State*, 196 So. 3d 1067, 1072 (¶20) (Miss. Ct. App. 2016) (quoting *Cane v. State*, 109 So. 3d 568, 571 (¶9) (Miss. Ct. App. 2012)). Further, we find no indication in the record that Wallace raised any issue regarding his attorney's representation at the plea hearing. *See Hooghe v. State*, 244 So. 3d 81, 90 (¶31) (Miss. Ct.

App. 2017) (finding that defendant presented insufficient evidence that his attorney's performance was deficient when defendant stated during his plea hearing that he was satisfied with the attorney's representation and did not "mention anything whatsoever" to the trial judge about the circumstances he relied on to support his ineffective assistance of counsel claim on appeal).

¶46. "A petitioner must produce more than conclusory allegations on a claim of ineffective assistance of counsel." *Thomas*, 159 So. 3d at 1216 (¶13) (quoting *Williams v. State*, 145 So. 3d 1241, 1246 (¶18) (Miss. Ct. App. 2014)). In this case, Wallace's sworn statements in his guilty plea petition, the statements he made at his plea hearing that he was satisfied with his attorney's representation, and the lack of any sworn testimony or statement that but for his attorney's alleged errors he would not have pleaded guilty, causes his ineffective-assistance-of-counsel claim to fail. Wallace has "failed to present any 'extraordinary circumstances' that would constitute an exception to the [successive writ] . . . bar[]" in this case. *Harris*, 313 So. 3d at 511 (¶34).

C. Ineffective-Assistance-of-Counsel Claim Failure on Merits

¶47. In any event, even if Wallace had not waived his ineffective-assistance-of-counsel claim, he could not meet the two-part test under *Strickland v. Washington*, 466 U.S. 668, 687 (1984) to prove such a claim. "Under *Strickland*, a defendant must show: (1) that counsel's performance was deficient; and (2) the deficiency was prejudicial." *Jones*, 284 So. 3d at 860 (¶14). Wallace fails both prongs.

¶48. Wallace failed to prove that his attorney's performance was "deficient." As we addressed above, Wallace's statement in his second PCR petition, alone, is insufficient "to meet the pleading requirements of the PCR statute," *id.*, and even if it did, his statement makes no mention that but for his attorney's alleged errors, he would not have pleaded guilty.

¶49. Wallace also failed to prove that either alleged deficiency was "prejudicial." *Id.* Wallace now asserts on appeal that his attorney was remiss for failing to object to the evidence proffered by the State as obtained under a search warrant lacking probable cause, but Wallace did not even raise this contention before the circuit court or offer any evidence regarding the validity (or invalidity) of the search warrant based on that ground. He plainly cannot prove that any alleged deficiency on his attorney's part for failing to object on this basis was "prejudicial."

¶50. Nor can Wallace satisfy the "prejudicial" prong with respect to his Sixth Amendment speedy trial contention. "In *Barker v. Wingo*, 407 U.S. 514 (1972), the United States Supreme Court established a four-part balancing test to decide whether or not a criminal defendant has been denied his Constitutional right to a speedy trial." *Hall v. State*, 984 So. 2d 278, 282 (¶8) (Miss. Ct. App. 2006). The *Barker* test had been adopted by the Mississippi Supreme Court, and provides that "the trial judge is to balance: '(i) length of delay, (ii) the reason for the delay, (iii) the defendant's assertion of his right, and (iv) prejudice to the defendant.'" *Id.* (quoting *Price v. State*, 898 So. 2d 641, 648 (¶10) (Miss. 2005)).

¶51. Wallace contends that his Sixth Amendment right to a speedy trial was violated

because over four years elapsed from the date of his indictment (May 22, 2014) and the date he pleaded guilty on September 28, 2018. Wallace, however, ignores the relevant fact that when he was indicted, he was incarcerated in a federal prison serving a ninety-seven month sentence on charges similar to his Mississippi charge. As reflected in the record and Wallace's own pleadings, "[h]e completed the custodial portion of his federal sentence in April 2018 and was turned over to the Lamar County Sheriff on April 6, 2018, who had placed a detainer against [him] due to his [Mississippi] charge." Wallace was held in the Lamar County jail from April 6, 2018, until his plea and sentencing hearing on September 28, 2018, about five months after he was taken into custody in Mississippi. This five and one-half month delay after Wallace's return to Mississippi does "not implicate a delay of proportions sufficient to trigger the analysis under *Barker*." *Wall v. State*, 718 So. 2d 1107, 1113 (¶22) (Miss. 1998). Wallace's Sixth Amendment speedy trial contention therefore fails. *Id.*; *Hall*, 984 So. 2d at 282 (¶10).

¶52. The Mississippi Supreme Court addressed a similar situation in *Wall*, where Wall was arrested in Mississippi on drug charges, but later fled to Tennessee and was arrested and incarcerated on another offense there. *Wall*, 718 So. 2d at 1112 (¶21). After his release in Tennessee, Wall was re-arrested on the Mississippi drug charges and taken into custody in Mississippi. *Id.* He was tried about four months later in Mississippi. *Id.* The supreme court found that Wall's "arrest and incarceration in Tennessee on other charges does not start the clock ticking against the State of Mississippi." *Id.* at (¶22).

¶53. As the supreme court pointed out, "[t]he State was not even able to arrest Wall until . . . [he] was turned over to the State of Mississippi . . . [and] only about four months passed from the time Mississippi gained custody of Wall . . . until his trial took place in August of the same year." *Id.* at 1112-13 (¶22). This four-month time period "does not implicate a delay of proportions sufficient to trigger the analysis under *Barker v. Wingo*, 407 U.S. 514 (1972)." *Wall*, 718 So. 2d at 1113 (¶22).

¶54. The supreme court further explained that "[t]his Court has held that a delay of eight months or longer is presumptively prejudicial," *id.*, and "[u]ntil there is some delay which is presumptively prejudicial, there is no necessity for inquiry into the other factors that go into the balance." *Id.* (quoting *Barker*, 407 U.S. at 530). Accordingly, the supreme court found that it "need not even consider the other three *Barker* factors as Wall's assignment of error is without merit." *Id.*; *see Hall*, 984 So. 2d at 282 (¶10) (finding that a three and one-half month pre-trial delay after the defendant's return to Mississippi following his incarceration in another state did not violate the defendant's constitutional right to speedy trial in drug prosecution).

¶55. Here, just five and one-half months elapsed between Wallace's return to Mississippi and his guilty plea and sentencing hearing. As such, the remaining *Barker* factors are not implicated and Wallace's Sixth Amendment speedy-trial contention fails on the merits. Because Wallace's speedy-trial claim, itself, is without merit, his ineffective assistance argument based on this claim also fails. *See Chandler*, 196 So. 3d at 1071 (¶18) (determining

that where the defendant's double jeopardy argument was without merit, his ineffective-assistance-of-counsel claim based on his attorney's failure to raise that argument likewise failed).

¶56. In sum, we find that Wallace waived his ineffective-assistance-of-counsel claim based upon his attorney's failure to object to the State's proffered evidence as being obtained under a search warrant lacking probable cause. Wallace never raised that claim before the circuit court. Wallace also waived his ineffective-assistance-of-counsel claim on both grounds (invalid search warrant and speedy trial) because we find that he voluntarily, knowingly, and intelligently entered his guilty plea. Lastly, we find that Wallace's ineffective-assistance-of-counsel claim fails on the merits.

¶57. **AFFIRMED.**

BARNES, C.J., GREENLEE, WESTBROOKS, McDONALD, LAWRENCE, McCARTY, SMITH AND EMFINGER, JJ., CONCUR. WILSON, P.J., CONCURS IN RESULT ONLY WITHOUT SEPARATE WRITTEN OPINION.