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August 21, 2023 Mississippi Supreme Court Denying Extraordinary Petition for Relief Pursuant to the 1st and 14th Amendments of our United States Constitution and other Federal Treaties Appendix A

IN THE SUPREME COURT OF MISSISSIPPI
No.2022-M-00193

DERRICK T. WILLIAMS

v

STATE OF MISSISSIPPI
Respondent

ORDER

Before the panel of Kitchens, P.J., Maxwell and Beam, JJ., is the "Extraordinary Petition for Relief Pursuant to the 1st and 14th Amendments of Our United States Constitution and Other Federal Treaties" filed by counsel for Derrick T. Williams. Said filing is in the nature of a motion for post-conviction relief, and it is treated as such.

Williams's convictions of capital murder and theft of a motor vehicle, as well as his respective sentences of life without the eligibility for parole or probation and ten years to run consecutively, all in the custody of the Mississippi Department of Corrections, were affirmed on direct appeal. Williams v. State, 94 So. 3d 324 (Miss. Ct. App. 2011). The mandate issued on August 23, 2013. The instant application for leave is Williams's third, and the panel finds it to be barred by time and as a successive application. Miss. Code Ann. §§ 99-39-5(2), -27(9) (Rev. 2020). Additionally, the issue raised in the instant application was considered and rejected by this Court in Williams's first and second applications for leave. Order, Williams v. State, 2013-M-00123 (Miss. Feb. 14, 2013); Order, Williams v. State, 2022-M-00193 (Miss. July 26, 2022). The issue is further barred by the doctrine of res judicata. Miss. Code Ann § 99-39-21(3) (Rev. 2020). Accordingly,

the panel finds that Petition should be denied.

IT IS THEREFORE ORDERED that the Extraordinary Petition for Relief Pursuant to the 1st and 14th Amendments of Our United States Constitution and Other Federal Treaties, which is treated as motion for post-conviction relief is denied.

SO ORDERED, this the 19th Day of August, 2023.

/s/ Dawn H. Beam, Justice
Dawn H. Beam Justice

DERRICK T. WILLIAMS A/K/A DERRICK WILLIAMS v. STATE OF MISSISSIPPI, Case No.: 2022-M-00193 Filed March 29, 2023 Appendix B

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

DERRICK T. WILLIAMS
APPELLANT

vs. CAUSE NO.;2022-M-00193

STATE OF MISSISSIPPI
APPELLEE

EXTRAORDINARY PETITION FOR RELIEF PURSUANT TO THE 1ST AND 14TH AMENDMENTS OF OUR UNITED STATES CONSTITUTION AND OTHER FEDERAL TREATIES

COMES NOW, Derrick T. Williams, by and through Counsel, respectfully moves this Honorable Court to grant extraordinary relief, pursuant to the 1st, 5th, 6th and 14th Amendments of Our United States Constitution, with Federal Rules of Evidence Rule 201. and Federal Rule of Criminal

Procedure Rule 44 in support thereof, and the following reasons, to-wit;

I.WHETHER THE FUNDAMENTAL RIGHT TO PETITION THE STATE COURT'S PURSUANT TO THE 1sT AND 14TH AMENDMENTS OF OUR UNITED STATES CONSTITUTION UPON THE ISSUE OF BEING DENIED AND/OR DEPRIVED OF COUNSEL ON DIRECT APPEAL IN ABSENCE OF ANY VOLUNTARY WAIVER OF SUCH RIGHT TO COUNSEL IS RESTRICTED BY ANY TIMEFRAME WITHIN WHICH AN ACCUSED MUST APPEAL WITHIN AND IF SO HOW SUCH TIMEFRAME IS DETERMINED.

First Petitioner respectfully argues that this Honorable court should afford review upon the issue of him being denied assistance of counsel on direct appeal in absence of any waiver pursuant to the 1st and 14th

Amendment of Our United States Constitution. The First Amendment has since long entitled an accused to Petition the courts, including the Government for redress of his grievances. Undoubtedly, under numerous circumstances during the courses of appeals the courts have established precedents in that which have been beneficial to the guidance of the lower court's rulings, including being controlling provisions upon certain issues of law. Barker v. Wingo, 407,U.S. 512.; Evitts v. lucy, 469 U.S. 387 (1985).; Brady v. Maryland, 373 U.S. 83 (1963).; Strickland v. Washington, 466 U.S. 668 (1984). The court should determine the issues herein presented in this petition and set precedent upon the issue of petitioning the court pursuant to the federal treaties herein relied upon." Congress shall make no law respecting an establishment of religion, prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to

petition the Government for a redress of grievances."

In the context of the text it fails to specify any timeframe in which an accused may petition for redress. Relating to the fundamental issue highlighted within this petition, it is undisputed by the Petitioner's trial court record including his appeal record that he proceeded with his direct appeal pro se, in absence of there being any voluntary waiver of such right. In fact, when the trial court addressed the issue of whether the Petitioner had desired to proceed with the assistance of counsel on direct appeal he advised the court that he had planned to hire counsel. The Petitioner respectfully informed the trial court that he had planned to hire counsel which reasonably reflects that he did not desire to proceed with his appeal without counsel. Without any follow-up on the issue of whether Petitioner had managed to hire counsel or whether he desired to waive his right to

counsel on appeal he was left to defend himself on appeal in absence of there being any sufficient waiver. The prejudice is obvious. Federal Rules of Criminal Procedure 52(b) states:

RIGHT TO APPOINTED COUNSEL. A defendant who is unable to obtain counsel is entitled to have counsel appointed to represent the defendant at every stage of the proceeding from initial appearance through appeal, unless the defendant waives this right. Federal Rules of Criminal Procedure Rule 4. The aforementioned federal treaties are specific as to the right of proceeding with direct appeal with the assistance of counsel in absence of there being any waiver of such right including the right to petition the court for redress. The court should render it's opinion upon this Petition in light of these federal treaties and conclude trial court had given the Petitioner a specified amount of time to employ counsel. During that period, the Petitioner was of

the opinion that his family would be able to employ counsel upon his behalf, therefore he had advised the court accordingly. It would be later where he would learn that his family would not be fortunate enough to afford him any representation.

The Petitioner had never been sufficiently informed of his fundamental right to be represented by counsel on appeal neither had he been reasonably consulted by the court and satisfied it as to any voluntariness as to waiving of his right of representation. Losing trial under the circumstances of being actually innocent had taken a dramatic toll on the Petitioner and hampered his ability to attend to the rules of appellate procedure. Overwhelmed following losing the trial and undergoing the process of being submitted into the department of corrections, the Petitioner focused on proceeding with the prosecution of his appeal to the best of his ability however, had he been aware that he had been

lawfully entitled to representation in absence of any voluntary waiver, he would had exercised such right. This Honorable court should determine whether the right to be afforded relief pursuant to Rule 201 of the Federal rules of evidence upon the issue of being denied assistance of counsel upon direct appeal in absence of there being any sufficient voluntary waiver of such right is restricted to any timeframe that which is not specifically identified in the context of the language of the federal provision. Rule 201 of the Federal rules of Evidence reads in pertinent part, that;

(a) Scope. This rule governs judicial notice of an adjudicative fact only, not a legislative fact.

(b) Kinds of Facts That May Be Judicially Noticed. The court may judicially notice a fact that is not subject to reasonable dispute because it:

(1) Is generally known within the trial court's territorial jurisdiction;

or

(2) Can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

(c) Taking Notice. The court:

(1) May take judicial notice on it's own; or

(2) Must take judicial notice if a party requests it and the court is supplied with the necessary information.

(d) Timing. The court may take judicial notice at any stage of the proceeding.

After reviewing record of the appeal record of Cause number 2010-CT- 00859-COA the issue regarding representation cannot be reasonably disputed

neither does the record reflect any evidence of any sufficient waiver being found by the trial court. The proper remedy is to grant review pursuant to the above referenced federal treaties. In support of this petition the Petitioner attaches his

arguments and memorandum of law in regards to the denial of his fundamental right to be represented by counsel on direct appeal in absence of there being any voluntary waiver of such right.

Respectfully,

/s/ Tamarra Bowie
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Order Denying Motion for Reconsideration of Post Conviction Collateral Relief Motion and/or in the Alternative to Grant Permission to Proceed to the United States Supreme Court upon Writ of Certiorari
Appendix C

IN THE SUPREME COURT OF MISSISSIPPI

No. 2022-M-00193

DERRICK T. WILLIAMS
A/K/A DERRICK WILLIAMS
Petitioner
v.

STATE OF MISSISSIPPI
Respondent

ORDER

Before the undersigned Justice is the Motion for Reconsideration of Post Conviction Collateral Relief Motion and/or in the Alternative to Grant Permission to Proceed to the United States Supreme Court upon Writ of Certiorari, filed by counsel for Derrick T. Williams. On July 26, 2022, the Court entered an Order, denying

Williams's Application for Leave to Proceed in Trial Court on a Motion for Post-Conviction Relief, finding it to be barred by time, and as a successive application. Order Williams v. State, No. 2022-M-00193-SCT (Miss. July 26, 2022). Williams's claims were also found to be barred by the doctrine of res judicata. Id. Williams now seeks reconsideration, to which he is not entitled. See. M.R.A.P. 27(h). Accordingly, the motion for reconsideration should be dismissed.

IT IS THEREFORE ORDERED that the motion for reconsideration is dismissed.

SO ORDERED.

/s/ T. Kenneth Griffis, Justice
T. Kenneth Griffis, Justice

Derrick T. Williams A/K/A Derrick Williams v. State of Mississippi, Case No. 2022-M-00193, Motion for Reconsideration of Post Conviction Collateral Relief Motion and/or in the Alternative to Grant Permission to Proceed to the United States Supreme Court upon Writ of Certiorari filed on on August 8, 2022
Appendix D

IN THE SUPREME COURT OF MISSISSIPPI

DERRICK WILLIAMS
PETITIONER

Vs. NO. 2022-M-00193

STATE OF MISSISSIPPI
RESPONDENT

MOTION FOR RECONSIDERATION OF POST CONVICTION COLLATERAL RELIEF MOTION AND/OR IN ALTERNATE TO GRANT PERMISSION TO PROCEED TO THE UNITED STATES SUPRE.ME COURT UPON WRIT OF CERTIORARI

COMES NOW, Petitioner respectfully moves this Honorable court to reconsider its opinion, with Federal Rules of Evidence Rule 201 and the lst,5th, 6th,8th,14th Amendments of the United States Constitution in support thereof and the following reasons, to wit;

I.

That on July 26, 2022 this Honorable Court entered its order denying the Motion for Leave to Proceed in the Trial court. Order attached as Exhibit 1.

II.

That the right to proceed with the effective assistance of counsel on direct appeal is wholly a fundamental State Due Process issue and the issue of

whether there has been any sufficient waiver of such right can not be barred by procedural bars under ordinary circumstances. Evitts v. Lucy, 469 U.S. 387 (1985).

III.

That your Petitioner respectfully request this Honorable Court to take judicial notice pursuant to Federal Rules of Evidence Rule 201 that when a court learns that a defendant desires to act as his/her own attorney, the court shall on the records conduct an examination of the defendant to determine if the defendant knowingly and voluntarily desires to act as his own attorney pursuant to Patton v. State, 34 So.3d 563 (Miss. 2010). In addition for the court to take judicial notice finding that this on the right to counsel has not been Petitioned and is not present in any records before this court. The court is allowed to take judicial notice of the issue before the court because the issues can be determined from the record of this case in which those facts cannot reasonably be questioned.

IV.

That the court affirmed the Petitioner's Direct appeal in that which no attorney made any appearance in and that the court's records pertaining to this

case contains no records that indicate that there was any waiver of the right to proceed with counsel on his direct appeal and that these facts cannot be reasonably disputed.

V.

That the 1st Amendment United States Constitution guarantees the accused the right to petition the courts for redress.

VI.

That no procedure bar asserted on the face of the order supersedes this fundamental right under circumstances wherein there has clearly been a fundamental miscarriage of justice.

VII.

That Miss. Code Ann. 99-39-21 and/or Miss. Code Ann. 99-39-5 does not supersede the right to be represented by counsel on direct appeal that which is guaranteed by the 5th, 6th and 14th Amendments of Our United States

Constitution and the same should not be allowed to bar the consideration of such issue under the majority circumstances.

XIV.

Your Petitioner respectfully requests this honorable court reconsider its rendered decision.

WHEREFORE, PREMISES CONSIDERED, the Petitioner respectfully prays this court reconsider its Order and that the court warrant's judicial review pursuant to Federal Rules of Evidence, Rule 201. and/or in alternate that this action is afforded an evidentiary hearing at minimum and/or in alternate that he is granted permission to proceed upon the issues by Writ of Certiorari to the United States Supreme Court.

/s/ Tamarra Bowie

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CERTIFICATE OF SERVICE

I, Tamarra A. Bowie, Esq., do hereby certify that I have this day delivered MEC/ECF a true and correct copy of the above and foregoing to:

Lauderdale County Circuit Court
Clerk
Donna Hill Johnson
Post Box 1005
Meridian, Mississippi 39302

Lauderdale County Circuit Court
District Attorney Honorable
Kassie Coleman
Post Office Box 5163
Meridian, Mississippi 39302

Honorable Lynn Fitch
Attorney General of the State of
Mississippi
Post Office Box 220
Jackson, Mississippi 39205

Mississippi Supreme Court Clerk
P.O Box 249
Jackson, Mississippi 39205

This, the 8th day of August, 2022.

/s/ Tamarra Bowie

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105909

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Mississippi Supreme Court Denying Application for Leave to Proceed in Trial Court on a Motion for Post Conviction Relief entered July 26, 2022 Appendix E

IN THE SUPREME COURT OF MISSISSIPPI
NO. 2022-M-00193

DERRICK T. WILLIAMS A/KA DERRICK WILLIAMS
Petitioner
v.

STATE OF MISSISSIPPI
Respondent

ORDER

Before the panel of Kitchens, P.J., Beam and Griffis, JJ., is the Application for Leave to Proceed in Trial Court on a Motion for Post-Conviction Relief filed by counsel for Derrick T. Williams. Williams' s convictions of capital

murder and theft of a motor vehicle, as well as his respective sentences of life without the eligibility for parole or probation and ten years to run consecutively, all in the custody of the Mississippi Department of Corrections, were affirmed on direct appeal. Williams v. State, 94 So. 3d 324 (Miss. Ct. App. 2011). The mandate issued on August 23, 2013. The instant application for leave is Williams's second, and the panel finds it to be barred by time and as a successive application. Miss. Code Ann. §§ 99 39 5(2), 27(9) (Rev. 2020). Additionally, the issue raised in the instant application was considered and rejected by this Court in Williams's first application for leave. Order, Williams v. State, 2013-M-00123 (Miss. Feb. 14, 2013). The issue is further barred by the doctrine of res judicata. Miss. Code Ann§ 99-39-21(3). Accordingly, the panel finds that the application for leave should be denied.

IT IS THEREFORE ORDERED that the Application for Leave to Proceed in Trial Court on a Motion for Post-Conviction Relief is denied.

SO ORDERED, this the 2nd day of July, 2022.

/s/ James W. Kitchens
James W. Kitchens
Presiding Justice

The Mississippi Court of Appeals decision affirming the Lauderdale Circuit Court Conviction on all Counts
Appendix F

IN THE COURT OF APPEALS
OF THE STATE OF
MISSISSIPPI
NO. 2010-KP-00859-COA

DATE OF JUDGMENT:	01/26/2010
TRIAL JUDGE:	HON. ROBERT WALTER BAILEY
COURT FROM WHICH APPEALED:	LAUDERDALE COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	DERRICK T.WILLIAMS (PRO SE)
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: LADONNA C. HOLLAND
DISTRICT ATTORNEY:	BILBO MITCHELL
NATURE OF THE CASE:	CRIMINAL-FELONY
TRIAL COURT DISPOSITION:	CONVICTED OF COUNT I, ARMED ROBBERY, AND SENTENCED TO TWENTY YEARS;

	COUNT II, CAPITAL MURDER, AND SENTENCED TO LIFE WITHOUT ELIGIBILITY FOR PAROLE OR PROBATION TO RUN CONCURRENTLY WITH THE SENTENCE IN COUNT II; AND COUNT III, THEFT OF A MOTOR VEHICLE, AND SENTENCED TO
DISPOSITION:	TEN YEARS TO RUN CONSECUTIVELY
MOTION FOR REHEARING FILED:	TO THE SENTENCES IN COUNTS I AND II, ALL IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS
	AFFIRMED IN PART; REVERSED AND RENDERED IN PART: 12/06/2011
MANDATE ISSUED	

BEFORE LEE, C.J., BARNES AND ROBERTS, JJ.

ROBERTS, J., FOR THE COURT:

¶1. A jury sitting before the Lauderdale County Circuit Court found Derrick T. Williams guilty of capital murder, armed robbery, and theft of a motor vehicle. For his armed robbery conviction, the circuit court sentenced Williams to twenty years in the custody of the Mississippi Department of Corrections (MDOC). For capital murder, the circuit court sentenced Williams to life in the custody of the MDOC without the possibility of parole or probation. The circuit court ordered Williams's sentence for armed robbery to run concurrently with Williams's sentence for capital murder. For theft of a motor vehicle, Williams was sentenced to serve ten years in the custody of the MDOC, with the sentence to run consecutively to his sentences for armed robbery and capital murder. Aggrieved, Williams appeals and raises eight issues. After careful consideration, we find that Williams's armed-robbery conviction, which was the basis for elevating the murder charge to capital murder, is contrary to

the Fifth Amendment's prohibition against double jeopardy. We, therefore, reverse and render as to Williams's conviction for armed robbery. However, we find no merit to Williams's other issues. Accordingly, we affirm in part and reverse and render in part.

FACTS AND PROCEDURAL HISTORY

¶2. On the morning of August 20, 2008, Sandra Grace went to a BP gas station adjacent to I-20 in Meridian, Mississippi. Because Grace routinely visited the store, she noticed some things were out of the ordinary before she went inside. As she looked through the door, Grace realized the coffee pot, pizza machine, and store sign were on, but the store clerk was not at the counter. Grace went across the street and asked someone at another store whether she had seen the store clerk who was typically in the gas station. When she heard that no one had seen the store clerk that morning, Grace went outside and used a pay phone to call law-enforcement authorities.

¶3. Officer Otha Sanders with the Meridian Police Department responded to the call. He met Sergeant David Ladin and Grace at the BP gas station. Officer

Sanders also saw that the coffee pot was on, but there was no coffee in it. Additionally, he saw that the pizza machine was on. He later testified that it was unusual for a gas station to serve pizza at that time of the morning. When he and Sergeant Ladin realized the door to the gas station was locked, they called a locksmith.

¶4. Once the locksmith unlocked the door, Officer Sanders and three other officer went inside the gas station. After going inside the men's restroom, Officer Sanders's superior officer ordered everyone to leave the gas station. The officers had discovered Mohammed Alnazaili's body in the restroom. In an extraordinarily bloody crime scene, Alnazaili's hands and feet had been bound with duct tape. The officers secured the perimeter of the gas station and waited for additional officers to arrive.

¶5. During the subsequent investigation, authorities discovered that the cash register had been left open, and there was no paper money inside it. Authorities also found a computer monitor in a back room of the BP gas station. The computer contained a digital video feed of

the BP gas station's surveillance system. Detective Joe Hoadley, the lead investigator in the case, and other officers with the Meridian Police Department were able to watch the events that unfolded during the previous night on the video feed.

¶6. That night, Alnazaili was behind the counter when Izola McMillan, who had been working as an employee at the gas station for a couple of weeks, came into the gas station and joined him behind the counter. McMillon and her boyfriend, Williams, had been staying with one of Williams's relatives in Meridian for approximately one month. McMillan later explained that, on the same date that Alnazaili was killed, Williams's relative had informed the couple that they could no longer stay with him because they had not paid any rent. McMillan and Williams planned to return to Chicago, Illinois, but they did not have any money for their return trip.

¶7. The video-surveillance footage further showed that at approximately 10:00 p.m., Williams also went inside the gas station. Williams bought a pack of cigarettes from Alnazaili. However, Williams then removed a pistol from a bag he was

carrying. The gas station's video-surveillance footage clearly shows Williams hitting Alnazaili with the pistol. Alnazaili fell to the floor, and Williams went behind the counter. While McMillan locked the doors, Williams hit Alnazaili with the pistol at least two more times and dragged Alnazaili to the men's restroom. McMillan later testified that she could hear Alnazaili screaming while she mopped up his blood from the floor.

¶8. Williams left Alnazaili bound and screaming in the bathroom, where Alnazaili bled to death. McMillan took $1,100 from the cash register. She also took Alnazaili's car keys. After McMillan locked the store, she and Williams fled in Alnazaili's car.

¶9. McMillon and Williams made it to Chicago. Authorities in Chicago discovered a burned car that was later identified as Alnazaili's. McMillon and Williams were eventually arrested and extradited to Mississippi, where they were indicted for capital murder, armed robbery, and theft of a motor vehicle. Williams pled not guilty to all three charges. To avoid trial, McMillon pled guilty to manslaughter and

armed robbery. She also agreed to testify against Williams.

¶10. At trial, the prosecution called six witnesses: Grace; Officer Sanders; Detective Hoadley; Detective Robert McVicker of the Chicago Police Department; McMillon; and Dr. Adele Lewis, the forensic pathologist who performed the autopsy on Alnazaili's body. The prosecution also submitted the video-surveillance footage into evidence. Williams chose not to testify. He rested without calling any witnesses. As previously mentioned, the jury found him guilty of capital murder, armed robbery, and theft of a motor vehicle. Williams appeals pro se.

ANALYSIS

I. INEFFECTIVE ASSISTANCE OF COUNSEL

¶11. Williams claims he received ineffective assistance of counsel. Specifically, he claims his attorney "failed to investigate the case and summon all witnesses who could have given critical testimony from personal knowledge of the events." However, Williams fails to name one witness that he asked his attorney to call. Similarly, Williams fails to discuss how any such witness would have aided his case.

¶12. We address the merits of an ineffective-assistance-of-counsel claim on direct appeal only when"(1) the record affirmatively show[s] ineffectiveness of constitutional dimensions, or (2) the parties stipulate that the record is adequate to allow the appellate court to make the finding without consideration of the findings of fact of the trial judge." Colenburg v. State,735 So. 2d 1099, 1101 (Miss. Ct. App. 1999). The parties have not stipulated that the record is adequate. Williams's claim would require his trial attorney's explanation as to whether Williams informed him that there were witnesses who could aid his defense. In the event that Williams did inform his trial attorney of witnesses on his behalf, Williams's trial attorney should have an opportunity to explain his reasoning as to why he chose not to call those witnesses. Williams's trial attorney has not had either opportunity. Accordingly, the record is not adequate to adjudicate Williams's claim on direct appeal. Under the circumstances, we must affirm "without prejudice to the defendant's right to raise the ineffective assistance of counsel

issue via appropriate post-conviction proceedings." Id. Stated differently, Williams may raise this claim in a motion for post-conviction relief if he so chooses.

II. INDICTMENT

¶13. Next, Williams claims the capital-murder indictment was defective because it did not list the "underlying elements of armed robbery under that count." Williams's argument is based on State v. Berryhill, 703 So. 2d 250,258 (¶34) (Miss. 1997), in which the Mississippi Supreme Court held that an indictment for capital murder based on the commission of burglary during the murder must "assert with specificity" the particular acts comprising the burglary. We are mindful that whether or not an indictment is defective is a question of law which we must review de novo. Gilmer v. State, 955 So. 2d 829, 836 (,r24) (Miss. 2007) (citation omitted).

¶14. The supreme court has '"declined to extend the holding in Berryhill to capital crimes undergirded by robbery." Milano v. State, 790 So. 2d 179, 186 (¶29) (Miss. 2001) (citing Turner v. State, 732 So. 2d 937, 948 (140) (Miss. 1999)). All of the essential elements comprising an armed

robbery need not be elaborated upon in an indictment charging capital murder because, unlike burglary, armed robbery does not include an essential element of an intent to commit some other crime. Id. at 187 (¶29). Accordingly, we find no merit to this issue.

III. DOUBLE JEOPARDY

¶15. Williams claims his conviction for both armed robbery and capital murder violate his Fifth Amendment prohibition against double jeopardy because armed robbery was the underlying felony that elevated the murder charge to capital murder. Commendably, the State admits concern that Williams's argument has some merit. After careful consideration, we agree that Williams's conviction and sentencing for both armed robbery and capital murder with armed robbery as the underlying felony qualifies as a violation of Williams's Fifth Amendment right against double jeopardy.

¶16. Williams did not raise this issue at trial. Even so, the prohibition against double jeopardy is a fundamental constitutional right that "may be excepted from procedural bars which would otherwise prohibit their consideration." Fuselier v.

State, 654 So. 2d 519,522 (Miss. 1995) (quoting Luckett v. State,582 So. 2d 428,430 (Miss. 1991)). See also Rowland v. State, 42 So. 3d 503, 508 (¶13-14) (Miss. 2010) (expressly overruling prior Mississippi cases which held that a double-jeopardy claim may be procedurally barred if not raised at trial). Consequently, Williams's failure to raise the issue at trial does not bar our consideration of the issue on appeal.

¶17. An "initial conviction and sentence for both felony murder and the underlying felony violate[s] the third aspect of the Double Jeopardy Clause, the protection against 'multiple punishments for the same offense' imposed in a single proceeding." Jones v. Thomas, 491 U.S. 376,381 (1989). The indictment against Williams accused him of murdering Alnazaili "while engaged in the commission of the felony crime of [a]rmed [r]obbery." Because Williams was also convicted of and sentenced to twenty years for armed robbery - the underlying felony that elevated the murder charge to capital murder - Williams has been subjected to a double jeopardy violation.

¶18. That Williams's sentences for capital murder and armed robbery were set to run concurrently is of no moment. As the Supreme Court has stated, "the second conviction, even if it results in no greater sentence, is an impermissible punishment." Ball v. United States, 470 U.S. 856, 865 (1985). The proper remedy is to vacate Williams's conviction and sentence for armed robbery while leaving his conviction and sentence for capital murder intact. See Jordan v. State, 728 So. 2d 1088, 1100 (¶ 58) (Miss. 1998).

IV. SUFFICIENCY OF THE EVIDENCE

¶19. Williams claims the evidence against him is insufficient to convict him of armed robbery and capital murder. We have already reversed Williams's armed-robbery conviction based on double jeopardy. Accordingly, we restrict our analysis to Williams's conviction of capital murder.

¶20. Williams last challenged the sufficiency of the evidence in his motion for a judgment notwithstanding the verdict (JNOV). "A motion for a [JNOV] is a challenge to the sufficiency of the evidence." Gilbert v. State, 934 So. 2d 330, 335 (,9) (Miss. Ct.

App. 2006). As the Mississippi Supreme Court has stated:

> in considering whether the evidence is sufficient to sustain a conviction in the face of a motion for [a] directed verdict or for [a JNOV], the critical inquiry is whether the evidence shows beyond a reasonable doubt. that accused committed the act charged, and that he did so under such circumstances that every element of the offense existed; and where the evidence fails to meet this test it is insufficient to support a conviction. [T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Should the facts and inferences considered in a challenge to the sufficiency of the evidence point in favor of the defendant on any element of the offense with sufficient force that reasonable men could not have found beyond a reasonable doubt that the defendant was guilty, the proper remedy is for the appellate court to reverse and render.

Bush v. State, 895 So. 2d 836, 843 (¶16) (Miss. 2005) (internal citations and quotations omitted).

However, this Court will determine there was sufficient evidence to sustain the jury's verdict if the evidence was "of such quality and weight that, having in mind the beyond a reasonable doubt burden of proof standard, reasonable fair-minded men in the exercise of impartial judgment might reach different conclusions on every element of the offense." Id. (internal citations and quotations omitted).

¶21. "The killing of a human being without the authority of law by any means or in any manner shall be murder...[w]hen done with deliberate design to effect the death of the person killed, or of any human being." Miss. Code Ann.§ 97-3-19(l)(a) (Rev. 2006). "The killing of a human being without the authority of law by any means or in any manner shall be capital murder...[w]hen done with or without any design to effect death, by any person engaged in the commission of the crime of ... robbery"
Miss. Code Ann. § 97-3- 19(2)(e). Williams argues there is insufficient evidence to convict him of capital murder because McMillan testified that they did not plan to kill Alnazaili. According to Williams, the

evidence was only sufficient to convict him of manslaughter. We disagree.

¶22. As the State notes, malice is not a necessary element of capital murder as set forth in section 97-3-19(2)(e). "There is nothing about [section 97-3-19(2)(e)] which requires any intent to kill when a person is slain during the course of a robbery. It is no legal defense to claim accident, or that it was done without malice." Griffin v. State, 557 So. 2d 542, 549 (Miss. 1990). Viewing the evidence in the light most favorable to the prosecution, the jury heard testimony that Williams and McMillan needed money to return to Chicago because they no longer had any place to live in Meridian. McMillan testified that they went to the BP gas station to try to get money so they could return to Chicago. The video-surveillance footage showed Williams buying a pack of cigarettes from Alnazaili. The video-surveillance footage also showed Williams removing a pistol from a bag that he had brought into the BP gas station. The jury saw Williams hit Alnazaili with that pistol. Williams then went behind the counter and used the pistol to hit Alnazaili two more times.

Williams dragged Alnazaili to the restroom, while McMillan locked the doors to the BP gas station and took the money out of the cash register. The video-surveillance footage also showed Williams rifling through the area of the cash register. After Williams and McMillan left in Alnzaili's car, Alnazaili bled to death in the restroom. McMillan testified that Williams told her to take the keys to Alnazaili's car. ¶23. Although there was no direct evidence that Williams and McMillan expressly intended to rob Alnazaili, intent can also be demonstrated by a defendant's actions and the surrounding circumstances. Moody v. State, 841 So. 2d 1067, 1093 (,r77) (Miss. 2003). Williams brought a pistol into a BP gas station and beat Alnazaili so badly that he bled to death. The jury heard evidence that the couple needed money. The jury could infer that Williams incapacitated Alnazaili for the purpose of removing an obstacle to the money that the couple needed. Furthermore, McMillon testified that Williams told her to take Alnazaili's keys. "[I]t is well established that 'any person who is present at the commission of a criminal offense and aids, counsels, or encourages

another in the commission of that offense is an 'aider and abettor' and is equally guilty with the principal offender.'" Sneed v. State, 31 So. 3d 33, 41 (124) (Miss. Ct. App. 2009) (quoting Jones v. State, 710 So. 2d 870, 874 (115) (Miss. 1998)). Viewed in the light most favorable to the prosecution, reasonable people could certainly conclude that the prosecution proved every necessary element beyond a reasonable doubt to convict Williams of capital murder because he killed Alnazaili during the commission of an armed robbery. We find no merit to this issue.

V. WEIGHT OF THE EVIDENCE

¶24. Next, Williams claims that the jury's verdict is contrary to the overwhelming weight of the evidence. As we review the circuit court's decision to deny a motion for a new trial, this Court "will only disturb a verdict when it is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice." Bush, 895 So. 2d at 844 (¶18) (citation omitted). The supreme court has further instructed that when reviewing a trial court's

decision to deny a motion for a new trial:

The motion ... is addressed to the discretion of the court, which should be exercised with caution, and the power to grant a new trial should be invoked only in exceptional cases in which the evidence preponderates heavily against the verdict. However, the evidence should be weighed in the light most favorable to the verdict. A reversal on the grounds that the verdict was against the overwhelming weight of the evidence, unlike a reversal based on insufficient evidence, does not mean that acquittal was the only proper verdict. Rather, ... the court simply disagrees with the jury's resolution of the conflicting testimony. This difference of opinion does not signify acquittal any more than a disagreement among the jurors themselves. Instead, the proper remedy is to grant a new trial.

Id. (footnote, internal citations, and quotations omitted).

¶25. For the reasons discussed in our analysis of the sufficiency of the evidence, we conclude that the jury's verdict is not contrary to the overwhelming weight of the evidence. That is, viewing the evidence in the light most

favorable to the jury's verdict, it would not sanction an unconscionable injustice to allow the jury's verdict to stand. We find no merit to this issue.

VI. JURY INSTRUCTIONS

¶26. Williams laments that the circuit court "either denied each instruction submitted by [Williams] or convinced [his] defense counsel to withdraw such instruction." He specifically notes the circuit court refused "the first [four] instructions" that Williams submitted. According to Williams, he was not allowed to submit "one single jury instruction setting out his theory of the case." According to Williams, "[t]he jury was instructed on the [circuit] court's theory of the case rather than on [his own] theory." Our standard of review is as follows:

Jury instructions are to be read together and taken as a whole with no one instruction taken out of context. A defendant is entitled to have jury instructions given which present his theory of the case[;] however, this entitlement is limited in that the court may refuse an instruction which incorrectly states the law, is covered fairly elsewhere in the instructions, or is without foundation in the evidence.

Agnew v. State,783 So. 2d 699,

702 (16) (Miss. 2001) (citing Humphrey v. State, 759 So. 2d 368, 380 (Miss. 2000)).

¶27. The record reflects that Williams's defense counsel submitted twenty-seven prospective jury instructions. There is no evidence the circuit court "convinced" Williams's defense counsel to withdraw any of those twenty-seven prospective jury instructions. Instead, the record indicates that Williams's defense counsel withdrew twenty of those twenty-seven jury instructions with no prompting by the circuit court.

¶28. The circuit court refused Williams proffered jury instruction designated as D-1 because it was a peremptory instruction. The circuit court gave Williams 's jury instruction that was designated as D-4, which reads as follows:

The Court instructs the Jury that the indictment in this case is nothing more than a formal accusation or charge against the accused and is [sic] it is not any evidence whatsoever of the guilt of the accused. You must not consider the indictment as any evidence of the alleged guilt of ... Williams, or draw any inference of guilt from it. As I told you earlier, the accused's innocence is

always presumed[,] and this presumption continues unless overcome by the evidence, which convinces you of the guilt of the accuse beyond a reasonable doubt.

Additionally, the circuit court gave Williams's jury instructions designated as D-8 andD-13. Instruction D-8, which was re-designated as instruction C-12, instructed the jury that the "strength or weakness of the evidence ... is not measured by the number of witnesses called to testify." Instruction D-13, re-designated as instruction C-13, instructed the jury that it was not permitted to draw any unfavorable inferences from the fact that Williams chose not to testify. Accordingly, Williams's claim that the circuit court refused every jury instruction that his attorney submitted is patently incorrect.

¶29. The circuit court refused proffered jury instruction D-5 because it attempted to define reasonable doubt. Proffered jury instruction D-5 reads:

The Court instructs the Jury that that [sic] you are bound, in deliberating upon this case, to give ... Williams, [sic] the benefit of any reasonable doubt that arises out of the evidence or lack

of evidence in this case. There is always reasonable doubt of the defendant's guilt when the evidence simply makes it probable that ... Williams is guilty. Mere probability of guilt will never call for you to convict ... Williams. It is only when, after examining the evidence on the whole, you are able to say on your oaths, beyond a reasonable doubt, that... Williams is guilty that the law will permit you to find him guilty. You
might be able to say that you believe beyond a reasonable doubt, that he is guilty, and yet, if you are not able to say on your oaths, beyond a reasonable doubt, that ... Williams is guilty, it is your sworn duty to find ... Williams, "Not Guilty."
"It is a long-standing rule that defining 'reasonable doubt' for the jury is improper." Colburn v. State, 990 So. 2d 206,217 (,J35) (Miss. Ct. App. 2008). Proffered jury instruction D-5 clearly attempts to define reasonable doubt, stating: "There is always reasonable doubt of the defendant's guilty when the evidence simply makes it probable that ... Williams is guilty." "The Mississippi Supreme Court has repeatedly and consistently asserted that

reasonable doubt defines itself." Lett v. State, 902 So. 2d 630, 638 (¶27) (Miss. Ct. App. 2005) (citations and quotations omitted). Instructions that attempt to define-reasonable doubt are prohibited because, among other reasons, such instructions tell "jurors that they should be able to state a reason why they have a doubt ... [; however], in our jurisprudence, jurors are never required to articulate any explanation of their decision." Id. at (¶28).

¶30. The circuit court refused proffered jury instruction D-16 because it was cumulative of jury instruction D-4. Proffered jury instruction D-16 reads:

The Court instructs the Jury that your verdict should be based solely upon the evidence presented in this trial and the law as stated to you by this Court. You must not allow yourselves to be biased against ... Williams because of the fact that he has been arrested and charged with the offenses of murder, armed robbery, and auto theft; or because an indictment has been filed against him or because he is standing trial today. None of these facts [are] evidence, and you are not permitted to infer or to speculate from any or all of

them that he is more likely to be guilty or innocent. The circuit court correctly held that proffered jury instruction D-16 was cumulative of jury instruction D-4, which the circuit court gave. As quoted above, jury instruction D-4 was substantially the same as proffered jury instruction D-16. It was within the circuit court's discretion to refuse a jury instruction that was "covered fairly elsewhere in the instructions." Agnew, 783 So. 2d at 702 (¶6).

¶31. Finally, the circuit court refused proffered jury instruction D-26, which reads:

The Court instructs the jury that the strength or weakness of the evidence offered in this case is not measured by the number of documents, items[,] or things offered into evidence. You must consider the evidence as a whole and determine what credibility, if any, you will give to each and every piece of evidence. The circuit court refused proffered jury instruction D-26 because it was cumulative of other jury instructions that were given. Jury instruction C-1 informed the jury at it was its "exclusive province ... to determine what weight and credibility will be assigned [to] the testimony and

supporting evidence of each witness." As stated above, jury instruction D-8, which was re-designated as jury instruction C-12, instructed the jury that the "strength or weakness of the evidence ... is not measured by the number of witnesses called to testify." Consequently, the substance of proffered jury instruction D-26 was covered by other jury instructions.

¶32. Reviewing each of the proffered jury instructions the circuit court refused, we find no merit to Williams's claims. Williams's assertion the circuit court refused all of his proffered jury instructions is patently false. Moreover, in each instance that the circuit court refused one of Williams's jury instructions, the circuit court acted well within its discretion to do so. We find no merit to this issue.

VII. SENTENCING

¶33. In this issue, Williams claims the circuit court erred when it sentenced him to life without the possibility of parole without first conducting a sentencing hearing. According to Williams, the circuit court should have considered sentencing Williams to life with the possibility of parole instead of life without the possibility of parole.

Williams bases his argument on the following statutory language: Upon conviction ... of guilt of a defendant of capital murder ... the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death, life imprisonment without eligibility for parole, or life imprisonment. The proceeding shall be conducted by the trial judge before the trial jury as soon as practicable. If, through impossibility or inability, the trial jury is unable to reconvene for a hearing on the issue of penalty, having determined the guilt of the accused, the trial judge may summon a jury to determine the issue of the imposition of the penalty In the proceeding, evidence may be presented as to any matter that the court deems relevant to sentence, and shall include matters relating to any of the aggravating or mitigating circumstances. However, this subsection shall not be construed to authorize the introduction of any evidence secured in violation of the Constitutions of the United States or of the State of Mississippi. The (S]tate and the defendant and/or his counsel shall be permitted to present

arguments for or against the sentence of death.
Miss. Code Ann.§ 99-19-101(1) (Rev. 2007).
¶34. Mississippi Code Annotated section 97-3-21 (Rev. 2006) provides:
Every person who shall be convicted of capital murder shall be sentenced (a) to death; (b) to imprisonment for life in the State Penitentiary without parole; or (c) to imprisonment for life in the State Penitentiary with eligibility for parole as provided in [Mississippi Code Annotated section] 47-7-3(1)(f)[(Rev. 2011)].
However, section 47-7-3(l)(f) sets forth that "[n]o person shall be eligible for parole who is charged, tried, convicted[,] and sentenced to life imprisonment under the provisions of [s]ection 99-19-101."
According to the supreme court, "although under the relevant code provisions, while there is the apparent necessity of a choice between death, life, and life without parole, in reality there is really only a choice between death and life without parole in the capital case in this context."
Pham v. State,716 So. 2d 1100, 1103 (¶21) (Miss.1998).
¶35. In this case, the prosecution did not seek the death penalty. "Obviously, if the State is not

seeking the death penalty, the only possible sentence for conviction of capital murder committed after July 1, 1994, the effective date of [section] 47-7-3, is life without parole." Id. The supreme court went on to hold that, under the circumstances, a circuit court "may impose the only possible sentence without formally returning the matter to the jury for sentencing." Id. Consequently, we find that the circuit court did not err when it sentenced Williams to life without the possibility of parole- the only possible sentence Williams could have received because the prosecution did not seek the death penalty. Accordingly, we find no merit to this argument.

VIII. CUMULATIVE ERRORS

¶36. Finally, Williams claims that the cumulative errors in this case require that this Court reverse his convictions and remand this matter for a new trial. Williams is correct that "individual errors, not reversible in themselves, may combine with other errors to make up reversible error." Wilburn v. State,608 So. 2d 702, 705 (Miss. 1992) (citing Hansen v. State, 592 So. 2d 114, 142 (Miss. 1991)). We have found that Williams's

armed-robbery conviction is a violation of the Fifth Amendment's prohibition against double jeopardy because it was the underlying felony that undergirded his capital murder conviction, and we reverse and render on that count. However, we have found no other errors in this case. It follows that there is no merit to this issue.

CONCLUSION

¶37. We affirm Williams's convictions for capital murder and theft of a motor vehicle. However, we reverse Williams's conviction for armed robbery and render a judgment of acquittal regarding the armed-robbery charge.

¶38. THE JUDGMENT OF THE LAUDERDALE COUNTY CIRCUIT COURT OF CONVICTION OF COUNT II, CAPITAL MURDER, AND SENTENCE OF LIFE WITHOUT ELIGIBILITY FOR PAROLE OR PROBATION AND COUNT Ill, THEFT OF A MOTOR VEHICLE, AND SENTENCE OF TEN YEARS TO RUN CONSECUTIVELY TO THE SENTENCE IN COUNT II, ALL IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS, IS AFFIRMED. THE JUDGMENT

OF CONVICTION OF COUNT I, ARMED ROBBERY, AND SENTENCE OF TWENTY YEARS TO RUN CONCURRENTLY WITH THE SENTENCE IN COUNT II IS REVERSED AND RENDERED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLANT.

LEE, C.J., IRVING AND GRIFFIS, P..JJ., BARNES, ISHEE, CARLTON, MAXWELL AND RUSSELL, JJ., CONCUR. MYERS, J., NOT PARTICIPATING.