

**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**FREDRICK ELLIS**

**APPELLANT**

**V.**

**NO. 2006-KA-1163-COA**

**FILED**

**STATE OF MISSISSIPPI**

**MAY 18 2007**

**APPELLEE**

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COURT OF APPEALS**

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**BRIEF OF THE APPELLANT**

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**CERTIFICATE OF INTERESTED PERSONS**

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of this court may evaluate possible disqualifications or recusal.


1. State of Mississippi
2. Fredrick Ellis, Appellant
3. Honorable Cono Caranna, District Attorney
4. Honorable Jerry O. Terry, Circuit Court Judge

This the 18<sup>th</sup> day of May, 2007.

Respectfully Submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS

BY:

  
W. Daniel Hincheliff  
COUNSEL FOR APPELLANT

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**STATEMENT OF THE ISSUES**

None

**STATEMENT OF THE CASE**

This Appeal proceeds from the Circuit Court of Harrison County, Mississippi, First Judicial District, and the judgement of conviction after a jury trial held March 23, 2005, the Honorable Jerry O. Terry, Circuit Court Judge, presiding. The Appellant, Frederick Charles Ellis ["Ellis"], was convicted of the crimes of sexual battery under Miss. Code Ann. §97-3-95(1)(d) and of statutory rape under Miss. Code Ann. §97-3-65(1)(b). Ellis was sentenced to a term of twenty years on each count, said sentences to run concurrently to one another, and to be served day for day in an institution under the supervision of the Mississippi Department of Corrections. This is the minimum sentence Ellis could have received.

## FACTS

The day before trial Ellis made three pro se motions, one apparently for an expert to examine the DNA evidence, another to have a new attorney appointed, and finally an apparent attempt to have certain "witnesses" subpoenaed. The trial judge ruled that an expert would have to be employed by Ellis at his expense and that Ellis had been appointed an experienced attorney, but any ruling on ineffectiveness would be reserved until after the trial. (T. 2-7)

Prior to trial Ellis' counsel moved the trial court to order an independent DNA test (C.P. 15-17) and for a psychological examination of Ellis, averring Ellis was not capable of assisting with his defense. (C.P. 18-20). The motion for a mental examination was renewed prior to opening statements. The court allowed Ellis to hire an expert at his own expense, but denied the psychological evaluation. Counsel also moved for the court to be permitted to introduce evidence of a previous false allegation of rape made by the victim, under M.R.E 412 (C), which was allowed (T. 21)

The victim testified at trial. She said that, at the time of the incidents, she was thirteen, having been born on June 2, 2000. (T. 33-34) She considered Ellis her "daddy" even though he was not her biological father, (T. 35) and that he lived with her, her mother and her sister. She had never been married. Ellis began having sexual relations (putting his penis in her vagina) with her when she was six years of age, and that this activity continued through July 1999, with regular frequency. (T. 36-37)

She testified she made a false allegation of molestation against her grandfather at Ellis' insistence when she was ten years of age. (T. 38) She became pregnant when she was thirteen. An objection to hearsay testimony, that Ellis wanted her to have an abortion was sustained, with

instruction to the jury to disregard the remark. (T. 40) She then testified without objection that Ellis had her go to a clinic in New Orleans for an abortion, but that she was too "far along." (T. 41)

On cross examination she related that she conceived in July, and that Ellis had sexually abused her every other day during that period. (T. 41) She acknowledged her baby was born with a medical condition, "Hirshsprung's" (T. 49) She did not suffer from "Hirshsprung's" (T. 50) The issue of Ellis instigating her accusation concerning her grandfather was examined, the victim telling the jury that Ellis "was telling [her] that it was [her] grandfather messing with [her]." (T. 52). On redirect she said it was Ellis, not her grandfather, that molested her. (T. 57)

The victim's sister (the biological child of Ellis) testified to having seen Ellis with his pants down on top of the victim. (T. 58-59)

Detective Rosario Ing investigated finding that Ellis was born on August 18, 1959. She witnessed the drawing of blood from the mother, child and Ellis. (T. 69-72) The blood samples were tested by ReliaGene. Megan Shaffer of ReliaGene testified that the testing was done in a scientifically accepted manner and proved the paternity of Ellis with a likelihood ratio that Ellis was the father was 58 million times more likely that Ellis was the father than a random male. That the probability was 99.99998 percent certain. (T. 98-103) On cross examination she stated that the probability that Ellis was the father was one of the highest she had ever seen. (T. 112) She conceded that the gene pool used for her data base was from Texas and could result in a 10 percent deviance, changing the ratio 5.8 million times more likely that Ellis was the father, assuming the deviation did not cause the ratio to go up. (T. 115)

Thereupon, the State rested. Ellis, through his attorney, moved for a directed verdict, which was denied. (T. 122-123)

The defense called Ellis to testify in his own behalf, and he denied that ever had any sexual

relations with the victim. He claimed to have consented to the drawing of his blood because he didn't do it.

The jury returned a verdict of guilty on both counts.

### **SUMMARY OF THE ARGUMENT**

None

### **ARGUMENT**

None

### **STATEMENT OF COUNSEL**

1. I, counsel for the Appellant, hereby represent to the Court pursuant to Lindsey v. State, 939 So. 2d 743 (Miss. 2005), that counsel has diligently searched the procedural and factual history of this criminal action and scoured the record searching for any arguable issues which could be presented in good faith for appellate review to this Honorable Court on behalf of Frederick Charles Ellis. Counsel for Appellant hereby asserts, that upon conclusion of said search, has found no such issue.

2. The matters considered, reviewed and included in counsel's search were: (a) the reason for the arrest and circumstances surrounding the arrest of Frederick Charles Ellis; (b) any possible violations of the defendant's right to counsel; (c) the entire trial transcript; (d) all rulings of the trial court; (d) possible prosecutorial misconduct; (f) all jury instructions; (g) all exhibits, whether admitted into evidence or not; (h) possible misapplication of the law in sentencing; and (i) the indictment and all of the pleadings in the record; (j) any possible ineffective assistance of counsel issues; (k) whether the evidence was sufficient to sustain the verdict, and (l) whether the verdict was contrary to the weight of the evidence.

3. Counsel confirms that he has, as of the date of this filing, mailed by first class mail,



postage prepaid, a copy of this brief and correspondence informing Frederick Charles Ellis that counsel finds no arguable issues in the record and that Mr. Ellis has a right to file a pro se brief in this cause.

4. Counsel for the Appellant respectfully requests that this Court grant unto the Appellant an additional forty (40) days in which to prepare and file a pro se brief, if he desires to do so.

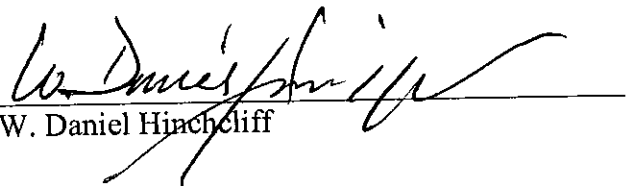
5. Counsel stands ready to prepare and file supplemental memoranda of law on any issues requested by this Honorable Court.

### CONCLUSION

There are no issues that counsel can in good faith present to this Court in this appeal.

Respectfully submitted,

OFFICE OF INDIGENT APPEALS  
Attorneys for Appellant

By:   
W. Daniel Hinchcliff

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### CERTIFICATE OF SERVICE

I, W. Daniel Hinchcliff, Counsel for Fedrick Ellis, do hereby certify that I have this day caused to be mailed via United States Postal Service, First Class postage prepaid, a true and correct copy of the above and foregoing **BRIEF OF THE APPELLANT** to the following:

Honorable Jerry O. Terry  
Circuit Court Judge  
421 Linda Drive  
Biloxi, MS 39531

Honorable Cono Caranna  
District Attorney, District 2  
Post Office Box 1180  
Gulfport, MS 39502

Honorable Jim Hood  
Attorney General  
Post Office Box 220  
Jackson, MS 39205-0220

This the 18<sup>th</sup> day of May, 2007.

  
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W. DANIEL HINCHCLIFF  
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