

RODERICK RASHAEL LEWIS

APPELLANT

FILED

VS.

APR 16 2008

NO. 2006-KA-01788-COA

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

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

THE STATE DOES NOT REQUEST ORAL ARGUMENT.

JIM HOOD, ATTORNEY GENERAL

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RODERICK RASHAEL LEWIS

APPELLANT

VS.

NO. 2006-KA-01788-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR APPELLEE

STATEMENT OF THE CASE

Roderick Rashael Lewis [“Lewis”] was convicted in the Circuit Court of Warren County, Honorable Frank G. Vollor, Circuit Judge, presiding, of the crimes of murder and armed robbery. The Court thereafter sentenced him to serve two, consecutive terms of life imprisonment. (C.P. 90-91) Aggrieved of the judgments thus entered against him, Lewis appealed. His defense counsel filed a brief pursuant to the holding of *Lindsey v. State*, 939 So.2d 743 (Miss.2005), after which Lewis filed a *pro se* supplemental brief, again, pursuant to the holding of the *Lindsey* case.

SUMMARY OF THE ARGUMENT

Pursuant to the procedure outlined in *Lindsey v. State*, 939 So.2d 743 (Miss.2005), this Court at this point must determine whether this case presents any arguable issue or issues, and, if so, order defense counsel to file a supplemental brief which addresses said issue or issues.

THE STATE RESPECTFULLY SUBMITS THAT THIS COURT SHOULD DETERMINE AT THIS JUNCTURE WHETHER THIS RECORD PRESENTS ANY ARGUABLE ISSUE OR ISSUES.

Counsel for Lewis filed in this Court a brief certifying that he had scoured the record in this case and concluded that there are no arguable issues supporting the appeal, that is, that there are no non-frivolous issues to present to this Court. Brief for Appellant at 4-6. Counsel also certified that he had mailed a copy of this brief to the defendant and had advised him of his right to file a *pro se* brief. Finally, counsel asserted that he “stands ready to prepare supplemental memoranda of law on any issues requested by the Court.” Brief for Appellant at 5. Lewis subsequently filed his *pro se* supplemental brief in this Court.

Pursuant to *Lindsey v. State*, 939 So.2d 743 (Miss.2005), citing *Smith v. Robbins*, 528 U.S. 259 (2000), the State respectfully submits that this Court now must review Lewis’s *pro se* brief as well as the record to determine whether defense counsel should be required to file a supplemental brief on behalf of Lewis. If the Court finds the existence of any arguable issue, regardless of the probability of the defendant’s success on appeal, this Court should order defense counsel to file a supplemental brief. The State then would respond to defense counsel’s supplemental brief. Without finding that there are no arguable, that is, non-frivolous issues, this Court should not consider the merits of any issues raised *pro se*, lest it run afoul of Lewis’s right to be represented by counsel on appeal. On the other hand, this Court should only order defense counsel to brief issues which it has determined to be arguable, that is non-frivolous, lest it require defense counsel to violate the Rules of Professional Conduct, which prohibit counsel from raising frivolous issues in court. Rule 3.1,

In conclusion, the State submits that in accordance with the procedure outlined in *Lindsey*, this Court must determine from Lewis's *pro se* brief as well as the record in this case whether any arguable issue or issues exist, and if so, order defense counsel to file a supplemental brief on behalf of his client.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

BY:



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"A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and in fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established "

certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:


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This the 16th day of April, 2008.


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