

COPY

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

GREGORY DEON JONES

APPELLANT

V.

FILED
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SUPREME COURT
COURT OF APPEALS

NO. 2006-KA-1994-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF OF THE APPELLANT

ORAL ARGUMENT NOT REQUESTED

MISSISSIPPI OFFICE OF INDIGENT APPEALS

Glenn S. Swartzfager, MS Bar No. [REDACTED]

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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. Gregory Deon Jones, Appellant
3. Honorable David Clark, District Attorney
4. Honorable Samac S. Richardson, Circuit Court Judge

This the 6th day of June, 2007.

Respectfully Submitted,
MISSISSIPPI OFFICE OF INDIGENT APPEALS

BY:



Glenn S. Swartzfager
COUNSEL FOR APPELLANT

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Counsel for Gregory Deon Jones

STATEMENT OF THE ISSUES

None

STATEMENT OF THE CASE

This appeal proceeds from the Circuit Court of Rankin County, Mississippi, and the Judgment of Conviction of Gregory Deon Jones after a jury trial, Judge Samac S. Richardson, Circuit Judge presiding. The Appellant, Gregory Deon Jones was convicted of Armed Robbery Miss. Code Ann. § 97-3-79, and sentenced to life imprisonment without the possibility of parole as a violent habitual offender by an order entered April 14, 2006. Gregory Deon Jones Leonard is presently incarcerated with the Mississippi Department of Corrections.

FACTS

On February 5, 2005, at approximately 8:00 a.m., a man entered the Exxon station at the intersection of Old Brandon Road and Pearson Road in Pearl, Mississippi. (Tr. 87). He purchased a cup of coffee and then left the store. (Tr. 87). According to Joanne Yurktana, the only attending clerk at the store at the time, the man re-entered the store about five or six minutes later while Ms. Yurktana had her back to the registers. (Tr. 87). Ms. Yurktana turned around to see a man “standing at the only exit of the cashier’s space, holding a knife.” (Tr. 88). The man then asked Ms. Yurktana to open the cash register. She complied, and the man took “twenties and tens” out of the drawer, and left the store. (Tr. 88). At the time there were no other people present in the store. (Tr. 66).

After the man left the premises, Ms. Yurktana ran out of the store and got into a

customer's car. (Tr. 91). She informed the person that the store had just been a robbery. (Tr. 91). They drove across the street to the pawn shop and called the police. (Tr. 91).

Detective Mark Logzino was contacted by the dispatch of the Pearl Police Department, later on the morning of February 5, 2005, and was informed that a robbery had occurred at the Exxon gas station at the corner of Old Brandon Road and Pearson Road, in Pearl, Mississippi. (Tr. 62). Detective Logzino arrived at the scene of the crime and observed two patrol units who were securing the crime scene. (Tr. 62). While at the scene, Detective Logzino spoke with the clerk inside the store, Joanne Yurktana, and got a description of the individual who committed the robbery. (Tr. 63). He also viewed the recording of the events which were recorded by the store's video camera system. (Tr. 64).

After viewing the tape, Detective Logzino contacted the Jackson Police Department and spoke with Detective Domino in an attempt to identify the person involved in the robbery. (Tr. 66). Detective Logzino was able to identify Gregory Jones as a possible suspect during his conversation with Detective Domino. (Tr. 66). A photo lineup of Jones along with five other males with similar physical characteristics was compiled. (Tr. 67). Later that same day Ms. Yurktana picked Gregory Jones from the line up. (Tr. 67). As a result of the identification, an arrest warrant was obtained for Gregory Jones. (Tr. 67).

Early the next morning, Detective Reginald Cooper and Detective Tommy Jones spotted a man matching the description of Jones at the Exxon at the corner of County Line Road and Ridgewood Road. (Tr. 72). The detectives first pulled in the BP parking lot in order to observe the suspect for "a minute or so." (Tr. 72). When the detectives approached

Jones in the Exxon parking lot, he took off running. (Tr. 72). The detectives followed Jones around a fence to the rear parking lot of the Hilton Hotel. While he was running, Jones reached into his pocket two times discarded what appeared to be a weapon. (Tr. 73, 75). Jones was apprehended inside the Hilton Hotel wearing a shirt matching the description given by the store clerk. (Tr. 73). After apprehending Jones, Detective Cooper recovered a knife from the area where Jones had dropped the object. (Tr. 76). The knife was identified by Joanne Yurktana as the knife that was used in the robbery of the store. (Tr. 90-91).

SUMMARY OF THE ARGUMENT

Counsel for the Appellant hereby represents to the Court pursuant to *Lindsey v. State*, 939 So.2d 743 (Miss. 2005), that there are no issues that counsel can in good faith present to the Court in this appeal

ARGUMENT

NONE

STATEMENT OF COUNSEL

1. Counsel for the Appellant hereby represents 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 to the Court on Mr. Jones' behalf in good faith for appellate review, and upon conclusion, has found none.

2. The matters considered, reviewed and included in counsel's search were: (a) the reason for the arrest and the circumstances surrounding arrest of Gregory Deon Jones; (b)

any possible violations of Mr. Jones' right to counsel; the entire trial transcript; (d) all rulings of the trial court; (e) possible prosecutorial misconduct; (f) all jury instructions; (g) all exhibits, whether admitted into evidence or not; and (h) possible misapplication of the law in sentencing. *Lindsey v. State*, 939 So.2d 743, 748 (Miss. 2005). Counsel additionally considered the indictment and all of the pleadings in the record, and any possible ineffective assistance of counsel issues, and the propriety of the order granting the State's motion to amend the indictment to change the date of the alleged offense.

3. Counsel would direct to the Court's attention for its consideration the following list of possible errors which might support an appeal: (1) whether it was error to allow the State to amend the indictment to allege that Jones is an habitual offender; (2) whether it was error to allow the State to amend the indictment to change the date of the alleged offense; (3) whether it was error to deny Jones' proposed instruction on the lesser-included offense of simple robbery; (4) whether it was error to deny Jones' proposed instruction on the lesser-include offense of grand larceny; (5) whether it was error to deny Jones' proposed instruction on the lesser-included offense of petit larceny, and (6) whether it was error for the trial court to grant Jury Instruction No. 12 which is also known as the *Sharplin* instruction. See *Sharplin v. State*, 330 So.2d 591, 596 (Miss.1976).

4. Counsel further confirms that he has, as of the date of filing this brief, mailed by first class mail, postage prepaid, a copy of this brief and correspondence informing Mr. Jones that counsel finds no arguable issues in the record and that Mr. Jones has a right to file a pro se brief.

5. Counsel for appellant requests that the Court grant Mr. Jones 40 days of additional time in which to file a *pro se* brief if he desires to do so.

6. Counsel stands ready to prepare supplemental memoranda of law on any issues requested by the court.

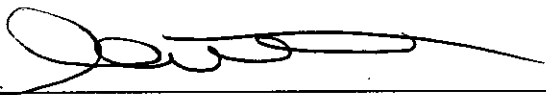
CONCLUSION

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

Respectfully submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS
For Gregory Deon Jones, Appellant

BY:



GLENN S. SWARTZFAGER, DEPUTY DIRECTOR
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CERTIFICATE OF SERVICE

I, Glenn S. Swartzfager , Counsel for Gregory Deon Jones, 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 Samac S. Richardson
Circuit Court Judge
Post Office Box 1855
Brandon, MS 39043

Gregory Deon Jones, #76663
Appellant
Mississippi State Penitentiary
Post Office Box 1057
Parchman, MS 38738

Honorable David Clark
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Honorable Jim Hood
Attorney General
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Jackson, MS 39205-0220

This the 6th day of June, 2007.


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