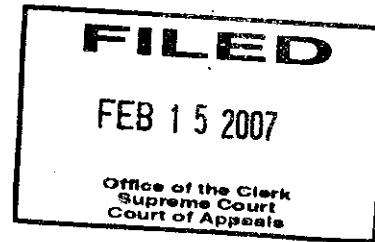


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IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI
NO.2006-KA-02160-COA

RANDY LEONARD



APPELLANT

V.

STATE OF MISSISSIPPI

APPELLEE

BRIEF OF APPELLANT

MISSISSIPPI OFFICE OF INDIGENT APPEALS

George T. Holmes, MSB No. [REDACTED]

Jenna Koger, Legal Intern

Billy G. Burk, Legal Intern

301 N. Lamar St., Ste 210

Jackson MS 39201

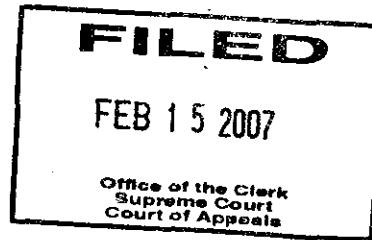
601 576-4200

Counsel for 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. Randy Leonard

THIS 15th day of February 2007.

Respectfully submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS
For Randy Leonard, Appellant

By:



George T. Holmes, Staff Attorney

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STATEMENT OF THE ISSUES

None

STATEMENT OF THE CASE

This appeal proceeds from the Circuit Court of Winston County, Mississippi, and the judgment of conviction after a jury trial held November 2, 2006, Honorable C. E. Morgan, III, Circuit Judge presiding; the appellant, Randy Leonard, was convicted of the crime of sexual battery under MCA §97-3-95(1)(a) (1972); the trial court sentenced Mr. Leonard to a term of fifteen years as follows: five (5) years of incarceration with ten (10) years post release supervision. Randy Leonard is presently incarcerated with the Mississippi Department of Corrections.

FACTS

Jalya Hardin, age sixteen (16), spent the night at her grandmother's house in Louisville August 12-13, 2006. Jalya's aunt Demetrius McMillan and the appellant Randy Leonard lived at the same residence as the grandmother with their three children and another child of Demetrius. [T. 37-47; 66]

Jalya reported to her mother Brenda Hardin the morning of August 13th she was wakened at approximately 4:00 a. m. that morning to find Randy Leonard inserting his finger into her vagina. Id. Jalya testified that her four cousins, grandmother and aunt were all asleep in the house when this incident occurred. A transcribed statement of

Randy Leonard was introduced stating that Jalysa woke up when Leonard was moving her leg and covering her with a towel as she slept on the sofa. [R. Ex. S-1; T. 60] The defendant also presented testimony of other witnesses contradicting certain details and providing a possible motive for Jalysa to fabricate the allegation. [T. 65-87]

The indictment alleged the offense occurred on August 14, 2006. [R. 3] The state sought to amend the indictment to change the incident date to August 13, 2006 [T. 24]; defense counsel objected [T. 24], the trial court waited until the trial was concluded and granted the amendment [T. 24, 64]. No order amending the indictment pursuant to MCA §99-17-15 (1972) was ever entered.

SUMMARY OF THE ARGUMENT

None

ARGUMENT

None

STATEMENT OF COUNSEL

1. Counsel for the Appellant hereby represents to the Court pursuant to Lindsey v. State, 939 So. 2d 743 (MS 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. Leonard's 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 Randy Leonard;
(b) any possible violations of Mr. Leonard's right to counsel; (c) 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; (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 lack
of an order amending the indictment changing the date of the alleged offense from
August 14 to August 13, 2006, resulted in a fatal variance between the proof and the
indictment notwithstanding Uniform Circuit and County Court Rule 7.06 ¶5?; and, (l)
whether the state failed to present sufficient evidence of the element of "without
consent"?

3. 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.
Leonard that counsel finds no arguable issues in the record and that Mr. Leonard has a
right to file a pro se brief.

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

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

CONCLUSION

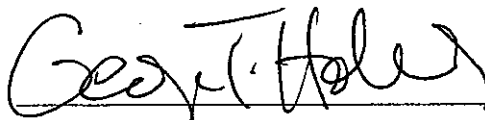
There are no issues that counsel can in good faith present to the court in this appeal

Respectfully submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS

For Randy Leonard, Appellant

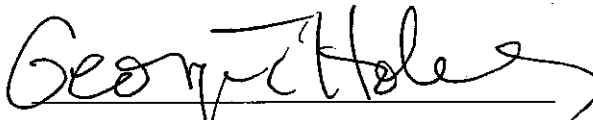
By:



George T. Holmes, Staff Attorney

CERTIFICATE

I, George T. Holmes, do hereby certify that I have this the 15th day of February, 2007, mailed a true and correct copy of the above and foregoing Brief Of Appellant to Hon. C. E. Morgan, III Circuit Judge, P. O. Box 721, Kosciusko MS 39090, and to Hon. Mike Howie, Asst. D. A. , P. O. Box 1262, Grenada MS 38902, and to Hon. Charles Maris, Assistant Attorney General, P. O. Box 220, Jackson MS 39205 all by U. S. Mail, first class postage prepaid.



George T. Holmes

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