

**COPY**

**IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI**

**RONALD DAVID WAY**

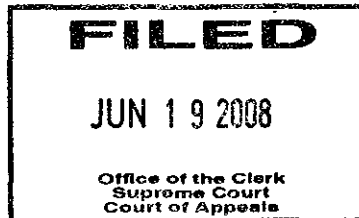
**APPELLANT**

**V.**

**NO. 2007-KA-1270-SCT**

**STATE OF MISSISSIPPI**

**APPELLEE**



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**REPLY BRIEF OF THE APPELLANT**

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MISSISSIPPI OFFICE OF INDIGENT APPEALS  
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Counsel for Ronald David Way

## **TABLE OF AUTHORITIES**

### **CASES**

Gideon v. Wainwright, 372 U.S. 335, 83 S. Ct. 792, 9 L.Ed.2d 799 (1963) .....	1
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Hodnett v. State, Dept. of Wildlife, Fisheries and Parks, 788 So. 2d 102, 105 (Miss. Ct. App. 2001) .....	2
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Stewart v. State, 299 So. 2d 53, 55 (Miss. 1969) .....	1
Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) .....	1
Swington v. State, 742 So. 2d 1106, 1114 (Miss. 1999) .....	1, 2

### **STATUTES**

Mississippi Constitution of 1890 .....	1
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## REPLY ARGUMENT

### **THE SUFFICIENCY OF THE EVIDENCE ARGUMENT SHOULD NOT BE PROCEDURALLY BARRED AS THE TRIAL COUNSEL'S INEFFECTIVE ASSISTANCE CONSTITUTES PLAIN ERROR.**

The State argues that Way is procedurally barred from attacking the sufficiency of the evidence on appeal because Way's trial counsel failed to request a peremptory jury instruction, to seek a directed verdict, or to move for JNOV at the conclusion of the trial. [State's brief, 8] The State asserts that this failure is "fatal to Way's complaint." [State's brief, 9]. Way acknowledges that his trial counsel did not raise issue with the sufficiency of the evidence before the trial court. However, the trial counsel's failure to raise such issue is tantamount to ineffective assistance of counsel and this Court should review Way's attack on the sufficiency of the evidence under the plain error doctrine.

This Court should take note of "errors in trial proceedings affecting substantial rights of the defendants although they were not brought to the attention of the trial court ..." *Grubb v. State*, 584 So. 2d 786, 789 (Miss. 1991); See also *Smith v. State*, 477 So. 2d 191, 195 (Miss. 1985); *Read v. State*, 430 So. 2d 832, 837 (Miss. 1983) (Citing *Brooks v. State*, 209 Miss. 150, 46 So. 2d 94 (1950)). A defendant's right to have effective assistance of counsel is a substantial right provided by the Sixth and Fourteenth Amendments to the United States Constitution and by the Mississippi Constitution of 1890, Art. 3 §26. *Read v. State*, 430 So. 2d at 837. See also *Gideon v. Wainwright*, 372 U.S. 335, 83 S. Ct. 792, 9 L.Ed.2d 799 (1963); *Stewart v. State*, 299 So. 2d 53, 55 (Miss. 1969).

Ineffective assistance of counsel claims are reviewed under a two-prong analysis as set forth by the United States Supreme Court in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). *Swington v. State*, 742 So. 2d 1106, 1114 (¶22) (Miss. 1999). In order to prevail on an ineffective assistance of counsel claim, the aggrieved party must show that (1) the

counsel's performance was deficient, and (2) the deficient performance prejudiced his defense. *Id.* In accessing the prejudice, the Court should consider the "totality of the circumstances". *Id.* (citing *McQuarter v. State*, 574 So. 2d 685, 687 (Miss. 1990)).

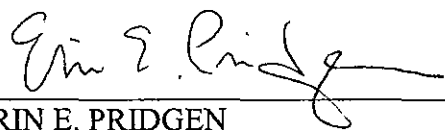

Way's trial counsel's failure to request a peremptory jury instruction, to seek a directed verdict or to move for a JNOV was deficient and has greatly prejudiced Way's defense on appeal. According to *Jackson v. State*, 423 So.2d 129, 131-32 (Miss. 1982), certain errors made during the trial must be included in the motion for a new trial. The Court lists several types of errors that must be included in the motion for a new trial, one of which includes, "where it is contended that the verdict of the jury is against the overwhelming weight of the evidence." *Id.* (Citing *Gilmer v. Gunter*, 46 So. 2d 447 (Miss. 1950)). If the defendant does not attack the sufficiency of the evidence in the motion for a new trial, "the insufficiency claim is not properly preserved for appeal." *Hodnett v. State, Dept. of Wildlife, Fisheries and Parks*, 788 So. 2d 102, 105 (¶10) (Miss. Ct. App. 2001) (citing *Medious v. State*, 375 So. 2d 405, 406 (Miss. 1979)).

Way is entitled to the right to argue that the evidence was insufficient to support a jury verdict. His trial counsel's performance was deficient and this deficient performance prejudiced his defense. But for this performance, Way would have been entitled to assert the issue of insufficiency of evidence on appeal. Way requests that this Court consider the trial court's performance as deficient and review the insufficient evidence claim under the plain error doctrine.

### CONCLUSION

The Court is not procedurally barred from reviewing Ronald Way's claim regarding the insufficiency of the evidence. Way should be allowed to assert all defenses available on appeal and, but for the trial counsel's deficient performance, Way would have been entitled to attack the insufficiency of the evidence. Way requests that this Court consider the trial court's performance as deficient and review the insufficient evidence claim under the plain error doctrine.

Respectfully submitted,  
MISSISSIPPI OFFICE OF INDIGENT APPEALS

BY:   
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**CERTIFICATE OF SERVICE**

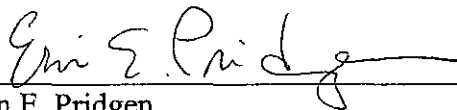
I, Erin E. Pridgen, Counsel for Ronald David Way, do hereby certify that I have this day caused to be mailed via United States Postal Service, First Class postage prepaid, a true and correct copy of the above and foregoing **BRIEF OF THE APPELLANT** to the following:

Honorable Robert P. Chamberlin, Jr.  
Circuit Court Judge  
Post Office Box 188  
Hernando, MS 38632

Honorable John W. Champion  
District Attorney, District 17  
365 Loshier Street, Suite 210  
Hernando, MS 38632

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

This the 19<sup>th</sup> day of June, 2008.

  
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Erin E. Pridgen  
COUNSEL FOR APPELLANT

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