

COPY

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

EDWARD L. NEAL

FILED

APPELLANT

AUG 14 2008

V.

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

NO. 2007-KA-2198-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF OF THE APPELLANT

MISSISSIPPI OFFICE OF INDIGENT APPEALS
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NO. 2007-KA-2198-COA

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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.

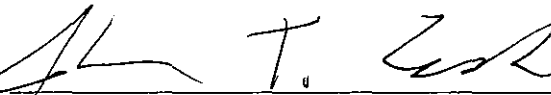
1. State of Mississippi
2. Edward L. Neal, Appellant
3. Honorable Forrest Allgood, District Attorney
4. Honorable James T. Kitchens, Jr., Circuit Court Judge

This the 14th day of August, 2008.

Respectfully Submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS

BY:



Justin T. Cook
COUNSEL FOR APPELLANT

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STATEMENT OF THE ISSUES

None

STATEMENT OF THE CASE

This appeal follows a conviction of felony escape against Edward Lamont Neal and a sentence of five years imprisonment in Circuit Court of Lowndes County, Mississippi, following a trial held November 14, 2007, Honorable James T. Kitchens Jr., Circuit Judge, presiding. Edward Lamont Neal is presently incarcerated with the Mississippi Department of Corrections.

FACTS

On Thursday, December 14, 2006, Christian Campbell (Officer Campbell), an employee for the Mississippi Department of Corrections, probation division met with Edward Lamont Neal (Neal), one of her probationers. (T. 80). Before the meeting, Neal had called Officer Campbell to inform her that he would be unable to pay the fee that day, asking her if he could meet her the next day. (T. 81).

Officer Campbell asked Neal if he had been using drugs. (T. 83). In response, Neal testified that if he was tested, he would come up positive for marijuana because he had used it two weeks earlier. (T. 83). This was in violation of his probation. (T. 83).

Campbell further testified that earlier that day, police officers had contacted her, claiming to need to speak to Neal. (T. 83). Campbell questioned Neal regarding his involvement with what the police department had contacted him for that morning. (T. 83). Campbell testified that Neal "proceeded to tell us situations that did not add up to what we already knew. And it was decided at that time that since he was not going to be truthful to us, that we needed to take him in to custody." (T. 83). Campbell and another probation officer, Nathan Blevins (Officer Blevins), placed Neal into custody and handcuffed him. (T. 83). Neal was advised that he was in custody. (T. 86).

Officer Blevins then searched Neal and found nothing. (T. 85). Officer Blevins then went to his office to retrieve his keys in order to transport Neal to the Lowndes County Adult Detention Center. (T. 85). At that point, according to the testimony of Officer Campbell, Neal got up, ran out of the hall and out the front door. (T. 87). Officers Campbell and Blevins attempted to chase after Neal, but were unable to catch up. (T. 88).

Officer Campbell called 911 in order to receive assistance, and with help from the Columbus police Department and the Lowndes County Sheriff's Office, set up a perimeter around the area. (T. 89). Attempts to locate Neal, however, were unsuccessful. (T. 89). Neal was subsequently listed on NCIC, featured in newspaper articles, as well as Crimestoppers. (T. 90-91).

Within the next two to three days, law enforcement agents went by Neal's listed residence approximately ten to fifteen times, but he was not there. (T. 91). Neal never turned himself in

and never reported for his next probationary meeting. (T. 91, T. 93). About one month later, on January 16, 2007, an individual called and advised officers as to the location of Neal, and, when officers arrived, Neal was found hiding in a closet. (T. 92).

Upon being fully advised of his right to testify, Neal took the stand in his own defense. During his direct examination, Neal testified that when he was being interviewed by the police, he denied any involvement in the situation. (T. 107). He also denied having ever claimed to Officer Campbell that he smoked marijuana. (T. 108). Neal testified that he simply left the building. (T. 108). He further testified that he was never placed in handcuffs. (T. 109).

However, when the State cross-examined Neal, it used prior-testimony where Neal testified that he was, in fact, handcuffed by Officer Campbell. (T. 112-14). Eventually, Neal admitted to being placed in handcuffs. (T. 121). He testified that at some point during the meeting, he was no longer in handcuffs, and that he was not in handcuffs when he left the building. (T. 121). Neal admitted to being aware that there was a warrant out for his arrest during the time between the incident and his apprehension. (T. 122).

The State chose to call Officer Blevins as a rebuttal witness. Officer Blevins testified that he saw Officer Campbell question Neal and place handcuffs on him. (T. 138). Officer Blevins testified to being "100 percent" positive that Neal was in handcuffs when he was sitting in front of Officer Campbell's desk. (T. 138). Officer Blevins further testified that he could see that Neal was handcuffed the entire time he was chasing after him until he lost sight of Neal. (T. 139).

On February 9, 2007, Neal was indicted for felony escape in violation of **Mississippi Code Annotated § 97-9-45**. (C.P. 1, R.E. 7). On November 14, 2007, the Appellant was tried, and, after deliberation, a jury returned a guilty verdict against him. (C.P. 53, R.E.9). The

Appellant was sentenced to five years in the custody of the Mississippi Department of Corrections to run consecutively with the previous sentence of Malicious Mischief. (C.P. 53, R.E. 8).

On November 21, 2007, the Appellant filed a Motion for JNOV, Alternatively, New Trial. (C.P. 55, R.E.10). The motion was denied by the trial court on February 26, 2008. (C.P. 57, R.E. 11). On December 10, 2007, feeling aggrieved by the verdict of the jury and the sentence of the trial court, the Appellant filed a notice of appeal. (C.P. 60, R.E. 12).

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 (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. Neal'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 Edward Neal; (b) any possible violations of Mr. Neal's right to counsel; (c) the entire trial transcript and content of the record; (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; and (j) any possible ineffective assistance of counsel issues.

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

4. Counsel for appellant requests that the Court grant Mr. Neal 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.

CERTIFICATE OF SERVICE

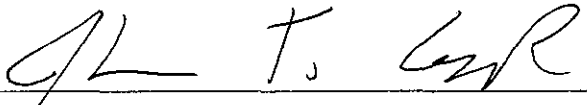
I, Justin T. Cook, Counsel for Edward L. Neal, do hereby certify that I have this day caused to be mailed via United States Postal Service, First Class postage prepaid, a true and correct copy of the above and foregoing **BRIEF OF THE APPELLANT** to the following:

Honorable James T. Kitchens, Jr.
Circuit Court Judge
P.O. Box 843
Columbus, MS 39703

Honorable Forrest Allgood
District Attorney, District 16
Post Office Box 1044
Columbus, MS 39703

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

This the 14th day of August, 2008.


Justin T. Cook
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