

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

**MYKEL DESHON GRIFFIN**

**APPELLANT**

**VS.**

**NO. 2008-KA-00487-SCT**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR THE APPELLEE**

**THE STATE DOES NOT REQUEST ORAL ARGUMENT.**

**JIM HOOD, ATTORNEY GENERAL**

**BY: CHARLES W. MARIS, JR.  
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MISSISSIPPI BAR NO. [REDACTED]**

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**BRIEF FOR APPELLEE**

**STATEMENT OF THE CASE**

Mykel Deshon Griffin [“Griffin”] was convicted in the Circuit Court of Lauderdale County, Honorable Robert W. Bailey, Circuit Judge, presiding, of the crime of possession of a firearm by a felon. The Court thereafter sentenced him to serve a term of three years’ imprisonment and to pay a fine of \$1,000.00. (C.P. 30) Aggrieved of the judgment thus entered against him, Griffin appealed. His defense counsel filed a brief pursuant to the holding of this Court in the case of *Lindsey v. State*, 939 So.2d 743 (Miss.2005), after which Griffin was given time to file a *pro se* supplemental brief. No such brief was forthcoming.

**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, and, if so, order defense counsel to file a supplemental brief which addresses said issue.

## ARGUMENT

### PREPOSITION

#### **THE STATE RESPECTFULLY SUBMITS THAT THIS COURT SHOULD DETERMINE AT THIS JUNCTURE WHETHER THE RECORD IN THIS CASE PRESENTS ANY ARGUABLE ISSUE.**

Counsel for Griffin filed in this Court a brief stating that he had “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. Griffin’s behalf in good faith for appellate review, and upon conclusion, has found none.” Brief for Appellant at p. 3. Counsel thus declared that, in his judgment, the record in this case contains no arguable, that is, non-frivolous issues to raise in this Court. Counsel further lists the possible issues he considered and rejected. Counsel also confirmed that he had mailed a copy of his brief to Griffin, had advised him of his right to file a *pro se* brief, and had requested this Court to grant Griffin additional time within which to file such a 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 4. This Court granted Griffin an additional 30 days within which to file a *pro se* supplemental brief “if he so desires.” Griffin apparently did not so desire, since the additional time has passed and he has filed no brief.

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 the record in this case to determine whether defense counsel should be required to file a supplemental brief on behalf of Griffin. If the Court finds the existence of any arguable issue, regardless of the probability of Griffin’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. This Court should not consider the merits of any arguable, that is, non-frivolous issue it finds without first ordering defense counsel to address said issue, lest it run afoul of Griffin'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 arguing frivolous issues in court. Rule 3.1, Miss. Rules Prof. Conduct.<sup>1</sup>

If this Court finds the existence of no arguable issues, then under the authority of *Lindsey*, it should simply affirm the judgment entered in the court below.

### CONCLUSION

The State submits that in accordance with the procedure outlined in *Lindsey*, this Court must determine from the record in this case, whether any arguable issue exists, and if so, order defense counsel to file a supplemental brief on behalf of his client. If no arguable issue is found, this Court should simply affirm the judgment below.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

BY:



CHARLES W. MARIS, JR.  
ASSISTANT ATTORNEY GENERAL

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<sup>1</sup>"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."

**CERTIFICATE OF SERVICE**

I, Charles W. Maris, Jr., Assistant Attorney General for the State of Mississippi, do hereby 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:


Honorable Robert W. Bailey  
Circuit Court Judge  
P. O. Box 1167  
Meridian, MS 39302

Honorable Bilbo Mitchell  
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Mykel Deshon Griffin  
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This the 3rd day of February, 2009.

  
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