

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

MYKEL DESHON GRIFFIN

APPELLANT

V.

NO. 2008-KA-0487-SCT

STATE OF MISSISSIPPI

APPELLEE

BRIEF OF THE APPELLANT

MISSISSIPPI OFFICE OF INDIGENT APPEALS

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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.

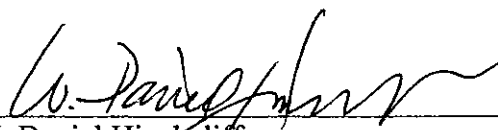
1. State of Mississippi
2. Mykel Deshon Griffin, Appellant
3. Honorable E.J. (Bilbo) Mitchell, District Attorney
4. Honorable Robert W. Bailey, Circuit Court Judge

This the 9th day of December, 2008.

Respectfully Submitted,

MISSISSIPPI OFFICE OF INDIGENT APPEALS

BY:


W. Daniel Hinchcliff
COUNSEL FOR APPELLANT

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TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS	i
TABLE OF AUTHORITIES	iii
STATEMENT OF THE ISSUES	1
STATEMENT OF THE CASE	1
FACTS	1
SUMMARY OF THE ARGUMENT	3
ARGUMENT	3
None	3
STATEMENT OF COUNSEL	3
CONCLUSION	4
CERTIFICATE OF SERVICE	5

TABLE OF AUTHORITIES

STATE CASES

Lindsey v. State, 939 So. 2d 743 (Miss. 2005)	3
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BRIEF OF THE APPELLANT

STATEMENT OF THE ISSUES

None

STATEMENT OF THE CASE

This appeal proceeds from the Circuit court of Lauderdale County, Mississippi. And a judgement of conviction of possession of a firearm by a convicted felon against Mykel Deshon Griffin following a jury trial on February 6, 2008, Honorable Robert Walter Bailey, Circuit Judge, presiding. Mr Griffin was sentenced to a term of three years and fined \$1,000. Mykel Deshon Griffin is currently incarcerated in an institution under the supervision of the Mississippi Department of Corrections.

FACTS

The trial began without any pretrial motions apparent in the record. The jury was selected and impaneled without a *Batson* objection. The defendant was not present during jury selection, having “declined” according to his attorney. (T. 45-46)

Mississippi Highway Patrolman Curtis Moss [“Moss”], an interdiction officer, was on duty on I-59 near Meridian Mississippi when he observed Mykel Deshon Griffin [“Griffin”] driving at

an excessive speed. He pulled the vehicle over and learned that Griffin did not have a driver's license. Griffin informed Moss that he had an I.D. card in his trunk and went to his trunk to retrieve it. (T. 59-68) Moss observed Griffin fumble around in a bag in the trunk. Moss asked Griffin if he had a weapon in the bag and was told no. Moss then asked for permission to search the vehicle, which was granted. Moss then retrieved a pistol and ski-mask from the bag Griffin had been rummaging in. (T. 68-71) The gun was admitted into evidence. At some point deputy sheriff pulled up and assisted. The deputy did not testify.

Griffin told Moss he was a convicted felon, and a certified copy of his record of conviction was admitted into evidence without objection. Griffin denied knowledge of the gun and told Moss the ski-mask was given to him by his boss at a job in California. (T. 77) The vehicle was registered to Griffin, co-owned with his girlfriend, Donna Gilbert. However, Griffin was the sole occupant of the vehicle.

Cross examination revealed that Griffin pulled over immediately. Moss testified that no video of the stop existed. The serial number of the gun came back "No record found." (T. 92) Moss agreed that he did not dust the gun for prints. (T. 82-96)

Thereupon, the State rested.

The defense began its case after a motion for a directed verdict and Griffin being advised of his *Culberson* rights. Griffin took the stand in his own defense. Objections to his high school grade point average, his basketball career and service in the army were not allowed as irrelevant. (T. 112-114) Griffin denied telling the trooper that his boss had given him the ski-mask, explaining he owned his own business, thus leaving the purpose of the ski-mask unresolved. (T. 115)

Griffin claimed to have given a ride to a man he was vaguely acquainted with (Curtis Jones) the day before, at the behest of his uncle. Jones put his own bags in the trunk and removed same,

in both instances without Griffin being in a position to observe. Griffin claimed to have never put his hand in the bag referred to by Moss; but he agreed to having consented to the search. He denied knowledge of the gun. (T. 123-126) Cross examination focused on Griffin's failure to call any witnesses to substantiate his version of the facts. No objection was raised to this line of questioning. Griffin admitted his military discharge had been less than honorable due to use of controlled substances. Further cross examination concerned his conviction. Objections were entered to "asked and answered", "form of the question" and were the only objection interposed during cross examination, until the defense objected to questions of the defendant on witnesses not discovered to the State. No ruling was made by the trial court. It should be noted that the defendant had already been cross examined on his failure to call witnesses without objection. (T. 144-146, 154-155)

The defense then rested and the State finally rested. The parties met to resolve jury instructions. The record is silent as to any peremptory instruction or motion for a directed verdict. Griffin's motion for new trial or J.N.O.V. was timely filed .

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. Griffin'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 circumstances surrounding the arrest of Mykel Deshon Griffin; (b) any possible violations of Mr. Griffin'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 objected to and/or potentially affecting the outcome of the trial, or violating a fundamental constitutional right; (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 pleadings in the record; and (j) any possible ineffective assistance of counsel issues ascertainable from the record.

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

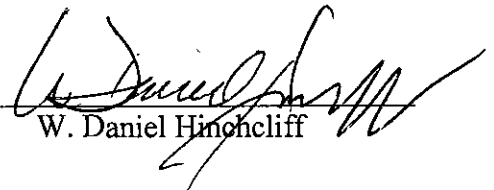
4. Counsel for appellant requests that this Court grant Mr. Griffin forty (40) days of additional time in which to file a *pro se* brief if he desires to do so..

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

CONCLUSION

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

Respectfully submitted,
OFFICE OF INDIGENT APPEALS

By: 
W. Daniel Hinchcliff

CERTIFICATE OF SERVICE

I, W. Daniel Hinchcliff, Counsel for Mykel Deshon Griffin, 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 W. Bailey
Circuit Court Judge
2104 8th Street
Meridian, MS 39302

Honorable E.J. (Bilbo) Mitchell
District Attorney, District 10
Post Office Box 5172
Meridian, MS 39302

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

This the 1st day of December, 2008.



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