

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

DERRICK CHATMAN

APPELLANT

VS.

NO. 2009-KA-00050-COA

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

THE STATE DOES NOT REQUEST ORAL ARGUMENT.

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IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

DERRICK CHATMAN APPELLANT

VS. NO. 2009-KA-00050-COA

STATE OF MISSISSIPPI APPELLEE

BRIEF FOR APPELLEE

STATEMENT OF THE CASE

Derrick Chatman [“Chatman”] was convicted in the Circuit Court of Washington County, Honorable W. Ashley Hines, Circuit Judge, presiding, of the crimes of aggravated assault and burglary of a dwelling. The Court thereafter sentenced him to serve a term of twenty years, with five suspended, and twenty-five years, with ten suspended, respectively, in the custody of the Mississippi Department of Corrections. Aggrieved of the judgments thus entered against him, Chatman appealed. His defense counsel filed a brief pursuant to the holding of *Lindsey v. State*, 939 So.2d 743 (Miss.2005), after which Chatman was given time to file a *pro se* supplemental brief. He filed such a brief on or about September 10, 2009.

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 CHATMAN'S *PRO SE* SUPPLEMENTAL BRIEF OR THE RECORD IN THIS CASE PRESENTS ANY ARGUABLE ISSUE.

Counsel for Chatman filed in this Court a brief stating that he had diligently searched the record in this case and had concluded that there are no arguable issues supporting the appeal, that is, that there are no non-frivolous issues to present to this Court. Counsel also confirmed that he had mailed a copy of his brief to Chatman and had advised him of his right to file a *pro se* 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 3-4. Chatman has now filed a *pro se* supplemental brief in this Court, claiming five alleged issues.

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 Chatman's supplemental brief as well as the record to determine whether defense counsel should be required to file a supplemental brief on behalf of Chatman. If the Court finds the existence of any arguable issue, regardless of the probability of Chatman'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. Without finding that there are no arguable, that is, non-frivolous issues, this Court should not consider the merits of any issues it finds, lest it run afoul of Chatman's'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.¹



If this Court finds the existence of no arguable issues, then under *Lindsey*, it should simply affirm the judgment entered in the court below. *Bradshaw v. State*, 6 So.3d 1123 (Miss.2009); *Neal v. State*, 5 So.3d 1166 (Miss.App. 2009).

CONCLUSION

The State submits that in accordance with the procedure outlined in *Lindsey*, this Court must determine from Chatman's *pro se* supplemental brief, as well as 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,

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¹"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:

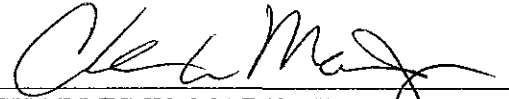
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This the 11th day of September, 2009.



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