

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI
NO. 2009-KA-00332-COA

GLENN PAYTON, JR.

APPELLANT

V.

STATE OF MISSISSIPPI

APPELLEE

BRIEF OF APPELLANT

MISSISSIPPI OFFICE OF INDIGENT APPEALS
George T. Holmes, MSB I [REDACTED]
301 N. Lamar St., Ste 210
Jackson MS 39201
601 576-4200

Counsel for Appellant

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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. Glenn Payton, Jr.

THIS 29th day of May, 2009.

Respectfully submitted,

GLENN PAYTON, JR.

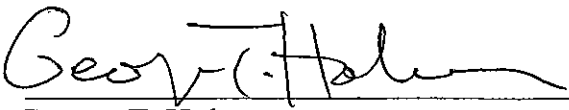
By: 
George T. Holmes,
Mississippi Office of Indigent Appeals

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TABLE OF AUTHORITIES

CASES:

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STATUTES

none

OTHER AUTHORITIES

none

STATEMENT OF THE ISSUES

none

STATEMENT OF THE CASE

This appeal proceeds from the Circuit Court of Forrest County, Mississippi where Glenn Payton, Jr., was convicted of statutory rape in a jury trial conducted January 7, 2009, Honorable Robert Helfrich, Circuit Judge, presiding. Glenn Payton, Jr., was sentenced to thirty (30) years imprisonment and is presently incarcerated with the Mississippi Department of Corrections.

FACTS

From about 1999 to 2006, Glenn Payton Jr., lived with his girlfriend Sherry Clay and Sherry's three daughters in Hattiesburg. [T. 111-12, 118]. In 2006, one of the daughters, Shameka, a fifteen (15) year old high school student, became pregnant. [T. 111-12, 118].

At first, Shameka told her mother that the father of the baby was a young man named "J. J.", but later said the father was Glenn Payton, Jr., who was then thirty-seven (37) years old. [T. 113-14, 118-21, 127, 138]. At trial Shameka described multiple sexual contacts with Payton under alleged duress. [T. 119-21].

In November 2006 Shameka gave birth to Janiyah Clay. [T. 118-19, 121, 124-26; Ex. S-1, S-2]. The state provided an expert opinion, based on DNA analysis of mouth

swabs, that Glenn Payton was the father of Janiyah Clay, to the exclusion of 99.99% of the untested male population. [T. 88- 95, 99-101, 128-29; Exs. 3, 4, 5, 7, 8].

Glenn Payton, Jr., testified in his own defense, admitted having sexual relations with Shameka, but denied any violence stating that Shameka should not have been peeking in his room with nothing on but a bath towel. [T. 136]. When asked if he had sexual relations with Shameka, Glenn responded, "How am I going to get around it? There ain't no denying it." [T. 140-41]. "I didn't threaten nobody." *Id.* Shameka "initiated it and she know it". *Id.* Payton said he had sex with Shameka twice but suggested that Shamka had other sexual partners too. *Id.*

SUMMARY OF THE ARGUMENT

None.

STATEMENT OF COUNSEL

1. The undersigned counsel for the Appellant hereby represents to the Court pursuant to *Lindsey v. State*, 939 So. 2d 743 (Miss. 2005), that he 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. Payton's behalf in good faith for appellate review, and upon conclusion, found no errors which were ultimately prejudicial to Mr. Payton.

2. The entire record and transcript were scrupulously reviewed and matters considered in counsel's search were:

(a) issues concerning the amendment of the indictment; (b) speedy trial issues; (c) challenges of jurors for cause; (d) all rulings of the trial court; (e) possible issues of ineffective counsel; (f) all jury instructions were reviewed; (g) counsel reviewed the admission of all exhibits; (h) counsel looked for possible misapplication of the law in sentencing; but (i) counsel is unable to argue, in good faith, any prejudicial error because of the apparent admissions of the appellant under oath to the statutory elements of the charges against him.

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

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

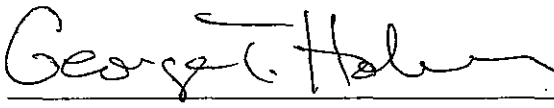
CONCLUSION

An additional forty (40) days enlargement of time is requested for Glenn Payton, Jr., to file any *pro se* brief he would wish to file.

Respectfully submitted,

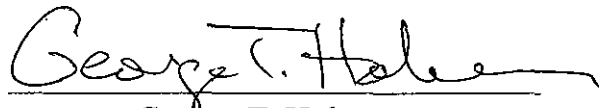
MISSISSIPPI OFFICE OF INDIGENT APPEALS

For Glenn Payton, Jr., Appellant

By: 
George T. Holmes, Staff Attorney

CERTIFICATE

I, George T. Holmes, do hereby certify that I have this the 29th day of May, 2009, mailed a true and correct copy of the above and foregoing Brief Of Appellant to Hon. Robert B. Helfrich, Circuit Judge, P. O. Box 309, Hattiesburg MS 39403, and to Hon. Jon Mark Weathers, Dist. Atty., P. O. Box 166, Hattiesburg MS 39403, and to Hon. Charles Maris, Assistant Attorney General, P. O. Box 220, Jackson MS 39205 all by U. S. Mail, first class postage prepaid.


George T. Holmes

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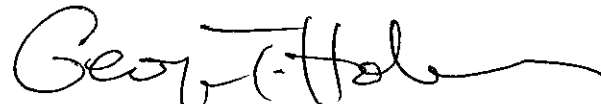
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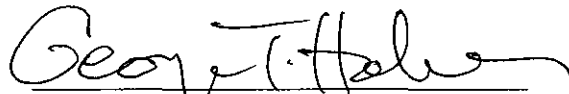
**AMENDED CERTIFICATE OF SERVICE
FOR BRIEF OF APPELLANT**

I, George T. Holmes, counsel for the appellant, hereby certify that on the May 29, 2009, I mailed a true and correct copy of the Brief of the Appellant, filed the same day in the above styled and referenced appeal, to Glenn Payton, Jr., MDOC # 78467, Post Office Box 1419, Leakesville, MS 39451, Hon. Robert B. Helfrich, Circuit Judge, P. O. Box 309, Hattiesburg MS 39403, Hon. Jon Mark Weathers, Dist. Atty., P. O. Box 166, Hattiesburg MS 39403, and Hon. Charles Maris, Assistant Attorney General, P. O. Box 220, Jackson MS 39205, all by U. S. Mail, first class postage prepaid.


George T. Holmes

CERTIFICATE

I, George T. Holmes, hereby certify that on June 1, 2009, I mailed a true and correct copy of the forgoing Amended Certificate of Service to Glenn Payton, Jr., MDOC # 78467 Post Office Box 1419, Leakesville, MS 39451, Hon. Robert B. Helfrich, Circuit Judge, P. O. Box 309, Hattiesburg MS 39403, Hon. Jon Mark Weathers, Dist. Atty., P. O. Box 166, Hattiesburg MS 39403, and Hon. Charles Maris, Assistant Attorney General, P. O. Box 220, Jackson MS 39205, all by U. S. Mail, first class postage prepaid.


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