

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

MATTHEW NASH

APPELLANT

VS.

NO. 2009-KA-0538

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE FACTS

Matthew Nash was convicted in Warren County Circuit Court of the crime of murder. (Record p. 195). He was sentenced to life in the custody of the Mississippi Department of Corrections. (Record p. 195). Nash's defense counsel filed a brief pursuant to the holding of *Lindsey v. State*, 939 So.2d 743 (Miss. 2005), after which Nash was given additional time to file a *pro se* supplemental brief. No such brief was forthcoming.

SUMMARY OF THE ARGUMENT

The conviction and sentence of Matthew Nash should be affirmed as no issues were presented for review and as Mississippi law establishes that the judgment of the trial court is presumed correct. However, after reviewing the record, should this Court find that there is an arguable issue and thereafter order Nash's counsel to file a supplemental brief, the State will promptly respond to said brief.

ARGUMENT

Nash's counsel filed as part of the Appellant's Brief his "Statement of Counsel" asserting 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. Nash's behalf in good faith for appellate review, and upon conclusion, has found none." (Appellant's Brief p. 2). After specifically listing the matters he considered, Nash's counsel also requested that the Court of Appeals allow an additional 40 days for the appellant to file a pro se brief should he so desire. (Appellant's Brief p. 2-3). This Court granted counsel's request for additional time for the appellant to file a pro se supplemental brief. No such brief has been filed.

It is well established that the judgment of the trial court is presumed correct. *Moore v. State*, 914 So.2d 185, 189 (Miss. Ct. App. 2005). Because no issues have been presented for review, the State rests on that presumption and respectfully submits that no further argument on its part is required at this time.


CONCLUSION

The State of Mississippi respectfully requests that this Honorable Court affirm the conviction and sentence of Matthew Nash as no issues have been presented for review and as Mississippi law is clear that the judgment of the trial court is presumed correct. However, after reviewing the record, should this Court find that there is an arguable issue and thereafter order Nash's counsel to file a supplemental brief, the State will promptly respond to said brief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Stephanie B. Wood, Special 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 Frank G. Vollar
Circuit Court Judge
P. O. Box 351
Vicksburg, MS 39181-0351

Honorable Richard Smith
District Attorney
P. O. Box 648
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This the 20th day of April, 2010.



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