

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

**MICHAEL EASLEY**

**APPELLANT**

**VS.**

**NO. 2009-KA-00668-SCT**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR THE APPELLEE**

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

**JIM HOOD, ATTORNEY GENERAL**

**BY: LAURA H. TEDDER  
SPECIAL ASSISTANT ATTORNEY GENERAL  
MISSISSIPPI BAR N [REDACTED]**

**OFFICE OF THE ATTORNEY GENERAL  
POST OFFICE BOX 220  
JACKSON, MS 39205-0220  
TELEPHONE: (601) 359-3680**

## TABLE OF CONTENTS

|  |   |
|--|---|
| TABLE OF AUTHORITIES .....   | I |
| STATEMENT OF THE CASE .....  | 1 |
| SUMMARY OF THE ARGUMENT .....  | 1 |
| ARGUMENT .....   | 2 |
| PROPOSITION:   |   |
| THE STATE RESPECTFULLY SUBMITS THAT THIS COURT<br>SHOULD DETERMINE AT THIS JUNCTURE WHETHER THE<br>RECORD IN THIS CASE PRESENTS ANY ARGUABLE ISSUE ..... | 2 |
| CONCLUSION .....   | 3 |
| CERTIFICATE OF SERVICE .....   | 4 |

## TABLE OF AUTHORITIES

### CASES

|   |         |
|---|---------|
| <i>Bradshaw v. State</i> , 6 So.3d 1123 (Miss. App. 2009) ..... | 3       |
| <i>Lindsey v. State</i> , 939 So.2d 743 (Miss. 2005) .....      | 1, 2, 3 |
| <i>Neal v. State</i> , 5 So.3d 1166 (Miss. App. 2009) .....     | 3       |
| <i>Smith v. Robbins</i> , 528 U.S. 259 (2000) .....             | 2       |

### RULE

|   |   |
|---|---|
| Rule 3.1, Miss. Rules Prof. Conduct ..... | 3 |
|---|---|

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

**MICHAEL EASLEY**

**APPELLANT**

**VS.**

**NO. 2009-KA-00668-SCT**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR APPELLEE**

**STATEMENT OF THE CASE**

Michael Easley ["Easley"] was convicted in the Circuit Court of Leflore County, Mississippi, Honorable W. Ashley Hines, Circuit Court Judge, presiding, of Statutory Rape in Count I and Count II and Fondling in Count III and Count IV. Easley was sentenced to a life term in Count I of Statutory Rape, 30 years in Count II of Statutory Rape, 15 years in Count III of Fondling (to run consecutive to Counts I and II), and 15 years year in Count IV (to run consecutive to Counts I, II and III. Aggrieved of the judgment thus entered against him, Easley appealed. His defense counsel filed a brief pursuant to the holding of *Lindsey v. State*, 939 So.2d 743 (Miss.2005), after which Easley was given more time to file a *pro se* supplemental brief. No such brief was forthcoming within the time prescribed.

**SUMMARY OF THE ARGUMENT**

Pursuant to the procedure outlined by the Supreme Court 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

### PROPOSITION

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

Counsel for Easley filed in this Court a brief stating that he “[i]t is the opinion of counsel for Appellant that there are no arguable issues supporting Appellant’s appeal, and that he has reached this conclusion after scouring the record thoroughly. . . .” Brief for Appellant at p. 4. That is, counsel for Easley represents 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 Easley, and had advised him of his right to file a *pro se* supplemental brief. Brief for Appellant at p. 4. Easley did not file a *pro se* supplemental brief in this Court.

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 to determine whether defense counsel should be required to file a supplemental brief on behalf of Easley. If the Court finds the existence of any arguable issue, regardless of the probability of Easley’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 Easley’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 raising 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 *Lindsey*, it should simply affirm the judgment entered in the court below. *Bradshaw v. State*, 6 So.3d 1123 (Miss. App. 2009); *Neal v. State*, 5 So.3d 1166 (Miss. App. 2009).

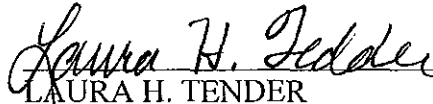
### CONCLUSION

The State submits that in accordance with the procedure outlined in *Lindsey*, this Court must determine from 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:



LAURA H. TENDER

SPECIAL ASSISTANT ATTORNEY GENERAL  
MISSISSIPPI BAR NO. [REDACTED]

---

<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, Laura H. TENDER, 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 W. Ashley Hines  
Circuit Court Judge  
P. O. Box 1315  
Greenville, MS 38702-1315

Honorable Dewayne Richardson  
District Attorney  
P. O. Box 426  
Greenville, MS 38702

W. S. Stuckey, Jr., Esquire  
Attorney At Law  
P. O. Box 1439  
Greenwood, MS 38935-1439

Michael Easley, #129960  
Ms State Penitentiary  
Unit 32E  
Post Office Box 1057  
Parchman, MS 38738

This the 4<sup>th</sup> day of March, 2010.

  
\_\_\_\_\_  
LAURA H. TENDER  
SPECIAL ASSISTANT ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL  
POST OFFICE BOX 220  
JACKSON, MISSISSIPPI 39205-0220  
TELEPHONE: (601) 359-3680