

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

JEREMY CATCHINGS

APPELLANT

VS.

NO. 2010-KA-0457

STATE OF MISSISSIPPI

APPELLEE

BRIEF FOR THE APPELLEE

APPELLEE DOES NOT REQUEST ORAL ARGUMENT

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STATEMENT OF THE CASE

The Grand Jury of Copiah County indicted defendant for what was commonly known as Grand Theft Auto (actually a 2008 Peterbilt Semi), but now is more precisely referred to as ‘Taking Possession of and Taking Away of a Vehicle’ in violation of *Miss. Code Ann* § 97-17-42. After a trial by jury, Judge Bobby Burt DeLaughter presiding, defendant was found guilty as charged and sentenced to five years, and if defendant successfully completes the Regimented Inmate Discipline Program, the remainder of the sentence is to be suspended and defendant is to be placed on probation. Additionally, defendant is to pay court costs, bond fee, a fine, restitution. (Jury Verdict & Sentencing Order, C.p. 40-41).

After denial of post-trial motions this instant appeal was timely noticed. (C.p. 51).

It would defendant Catchings is presently still in the custody of the Mississippi Department of Corrections, with a tentative release date of February, 2015.

STATEMENT OF FACTS

Defendant admitted to taking the truck (on the stand, under oath, tr. 46) – the problem was defendant was under the mistaken impression that if he intended to take the truck back it wasn't a felony. The fact of the matter is, the Mississippi legislature addressed that issue, amended the statute in 2007 and took away that defense.

Based on the clear, concise, facts, admission of defendant and the law the jury was correct in finding defendant guilty.

SUMMARY OF THE ARGUMENT

Counsel for defendant, pursuant to the rationale of *Lindsey*, has presented the case to this court for review. It would appear this case is now in a posture for this court to review the record on the merits and render a decision.

ARGUMENT

Counsel for defendant filed in this Court a brief certifying that he had scoured the record and concluded that there are no arguable issues supporting the appeal, i.e., there are no non-frivolous issues to present to this Court. Additionally, pursuant to *Lindsey v. State*, 939 So.2d 743 (Miss. 2005), counsel has sent a copy of the brief with correspondence informing defendant of his appeal status and right to file a *pro se* brief of any issues. The certificate of service attests to same.

The Court of Appeals of the State of Mississippi issued an order giving defendant Catchings 30 days to file a *pro se* brief. That time has expired, and as of this date, September 8, 2010, the State nor the docket of this Court show any supplemental filing by defendant.

Pursuant to *Lindsey, supra*, citing *Smith v. Robbins*, 528 U.S. 259 (2000), the state respectfully submits the current posture on appeal is, to wit:

¶18 . . . (5) Once briefing is complete, the appellate court must consider the case on its merits and render a decision.

Lindsey v. State, 939 So.2d 743 (Miss. 2005).

The State stands ready to respond to any issues requested by this Court.

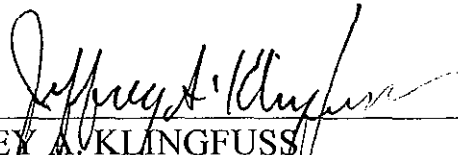
CONCLUSION


In conclusion, we submit that in accordance with the procedure outlined in *Lindsey*, this Court must consider the case on its merits and render a decision. The State seeks to have the verdict and sentence affirmed.

Respectfully submitted,

JIM HOOD, ATTORNEY GENERAL

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CERTIFICATE OF SERVICE

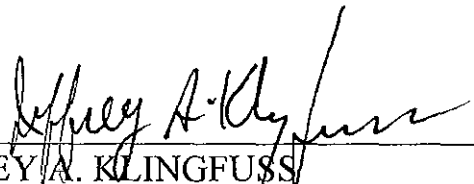
I, Jeffrey A. Klingfuss, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

Honorable Lamar Pickard
Circuit Court Judge
Post Office Box 310
Hazlehurst, MS 39083

Honorable Alexander C. Martin
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This the 9th day of September, 2010.



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