

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2018-KA-00509-SCT

***JERMAINE ALSTON a/k/a JERMAINE D.
ALSTON***

v.

STATE OF MISSISSIPPI

DATE OF JUDGMENT:	03/21/2018
TRIAL JUDGE:	HON. JOSEPH H. LOPER, JR.
TRIAL COURT ATTORNEYS:	MIKE HOWIE JAY HOWARD
COURT FROM WHICH APPEALED:	ATTALA COUNTY CIRCUIT COURT
ATTORNEYS FOR APPELLANT:	OFFICE OF STATE PUBLIC DEFENDER BY: W. DANIEL HINCHCLIFF GEORGE T. HOLMES
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: KAYLYN HAVRILLA McCLINTON
DISTRICT ATTORNEY:	DOUG EVANS
NATURE OF THE CASE:	CRIMINAL - FELONY
DISPOSITION:	AFFIRMED - 12/05/2019
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

BEFORE KITCHENS, P.J., COLEMAN AND GRIFFIS, JJ.

COLEMAN, JUSTICE, FOR THE COURT:

¶1. On March 21, 2018, an Attala County jury convicted Jermaine Alston of burglary of a dwelling. The trial court sentenced Alston as a habitual offender under Mississippi Code Section 99-19-81 (Rev. 2015) to twenty-five years without the possibility of parole or early release. Alston filed a motion for a judgment notwithstanding the verdict or, alternatively, a new trial. The trial court denied Alston's motion, and he filed a notice of appeal.

¶2. On appeal, the Court granted Alston’s trial counsel’s motion to withdraw and allowed counsel for the Mississippi Office of Indigent Appeals to be substituted as counsel of record. Alston’s appellate counsel found no arguable issue to raise on appeal and filed a brief in accordance with *Lindsey v. State*, 939 So. 2d 743 (Miss. 2005). After reviewing the record, we discern no reversible error or issue warranting supplemental briefing. We affirm Alston’s conviction and sentence.

FACTUAL AND PROCEDURAL BACKGROUND

¶3. On August 6, 2016, Daniel Aughtman left his home around 10:00 p.m. for about two hours. When Aughtman returned home, he noticed that his door was open even though he had locked it earlier before he left. Aughtman also noticed that a window had been broken and another window with a window air conditioner unit had been raised. The windows were not broken or raised when Aughtman left his home earlier. Aughtman went inside, noticed that his belongings were scattered around, and discovered that several of his possessions were missing. A large gun cabinet safe, guns, a television, an air conditioner, and a small safe had been taken. Aughtman called the police and reported that his home had been burglarized. Officer Dwain Steed of the Attala County Sheriff’s Office responded to the scene. Officer Steed observed the damaged window and the raised window. Officer Steed determined that the suspect forcibly had entered the home through the raised window. Officer Steed was unable to develop any suspects.

¶4. Months later, Aughtman informed an Atalla County Sheriff’s Office deputy that he suspected that his friend Brittani Stephens had been involved in the burglary. Aughtman

explained that Stephens had visited his home occasionally and had called him on the day of the burglary. Although Aughtman had regular contact with Stephens and spent time with her at his home, he had not heard from her since the day of the burglary. Aughtman thought the complete lack of contact since the day of the burglary was unusual. Aughtman testified that Stephens did not have permission to enter his house on August 6, 2016.

¶5. Chief Investigator Zelig Shaw of the Attala County Sheriff's Office interviewed Stephens. After Investigator Shaw interviewed Stephens, he developed Alston, Charlie Thrasher, and John Corr as additional suspects involved in the burglary. On August 10, 2017, Alston, Stephens, Thrasher, and Corr were indicted for burglary of a dwelling in violation of Mississippi Code Section 97-17-23 (Rev. 2014). Alston was charged as a habitual offender under Section 99-19-81. Alston's case was severed, and he was brought to trial. At trial, Alston did not dispute that Aughtman's home was burglarized and that Stephens was involved in the burglary. The State called Stephens and Thrasher to the stand. Stephens and Thrasher implicated Alston in the burglary.

¶6. Stephens testified that at the time of the burglary, she was dating Corr and that Thrasher was dating Alston. Late on the night of August 6, 2016, she drove Corr, Thrasher, and Alston to Aughtman's home. Stephens testified that she originally intended to go there to get some needles to shoot methamphetamine. Stephens explained that Aughtman had a diabetic roommate who used needles to treat his diabetes. On the way to Aughtman's, Stephens testified that she told Alston and the others that Aughtman "has been living really good and [she] happen[ed] to mention [that Aughtman] had some guns and stuff." When

they arrived at Aughtman's house, Stephens knocked on the door to see if Aughtman was home. Aughtman was not home, and Alston got out of the truck. Alston told Stephens that "let's just go in and get what he has." Stephens testified that Alston broke one window when he tried to pull an air conditioner out of the window. Alston then asked Stephens to help lift a different window with an air conditioner so that he could get inside. Stephens testified that Alston went inside through the window and unlocked the front door. Stephens testified that she and Thrasher went inside. She testified that she, Alston, and Thrasher stole a large safe, a small safe, and a television from the house and loaded it in the truck. Stephens testified that they left the scene and returned to Alston and Thrasher's house, where they opened the safes. Stephens testified that they later traded some of the stolen items for drugs and sold the other items to individuals that Alston had suggested.

¶7. Thrasher's testimony of the burglary largely mirrored Stephens's testimony. Thrasher testified that she, Alston, Stephens, and Corr were together on August 6, 2016. While they were in Stephens's truck that night, Stephens told them that "she knew where a lick might be." Thrasher understood Stephens's statement to mean that Stephens knew a house containing things of value that they could steal. Thrasher testified that, when they arrived at the house, Stephens, Corr, and Alston got out of the truck but that Thrasher remained in the truck. Thrasher testified that Corr hurt himself trying to get inside the house, so he came back to the truck. She stated that Stephens and Alston somehow made their way inside the house, that they stole several items from the house, and that they loaded them in the truck. The stolen items included a large safe containing guns, a small safe, and a television. After

the items were loaded in the truck, the group left the scene and returned to her and Alston's house. Thrasher testified that the stolen items were taken to someone that Alston knew.

¶8. After the State rested its case in chief, Alston chose not to offer any proof and also rested. The jury found Alston guilty of burglary of a dwelling, and the trial court sentenced him as a habitual offender under Section 99-19-81 to twenty-five years in prison.

¶9. Alston's appellate counsel filed a brief consistent with *Lindsey*, stating that no arguable issues could be appealed. *Lindsey v. State*, 939 So. 2d 743, 748 (¶ 18) (Miss. 2005). Alston's appellate counsel served a copy of the brief on Alston and requested that he be afforded the opportunity to file a pro se supplemental brief. The Court granted the request and afforded Alston the opportunity to file a pro se supplemental brief. On February 13, 2019, Alston filed a pro se motion for an extension of time to file a pro se supplemental brief. The Court granted the motion and afforded Alston additional time to file a pro se supplemental brief. On March 21, 2019, Alston filed another motion for an extension of time to file a pro se supplemental brief. The Court granted the motion and afforded Alston additional time to file a supplemental pro se brief.

¶10. On April 23, 2019, Alston filed a pro se motion for additional counsel, requesting that the Court order that his appellate counsel prepare a memorandum of law on certain issues, including ineffective assistance of trial counsel, ineffective assistance of appellate counsel, and issues that had been raised in Alston's posttrial motion for a judgment notwithstanding the verdict or, alternatively, for a new trial. On the same day, Alston filed a pro se motion to stay the briefing schedule or to hold briefing in abeyance until the Court decided his pro

se motion for additional counsel. On May 2, 2019, the Court denied both pro se motions and ordered that any pro se supplemental brief be filed before May 15, 2019. Alston failed to file a pro se supplemental brief.

DISCUSSION

¶11. Alston’s appellate counsel has complied with the procedure set forth by the Court in *Lindsey. Lindsey*, 939 So. 2d at 748 (¶ 18). The Court has conducted an independent review of the record to determine whether any arguable issue is apparent that might warrant supplemental briefing. *Id.*

¶12. “Burglary of a dwelling has two elements: (1) unlawful breaking and entering, and (2) intent to commit a crime therein.” *Jackson v. State*, 90 So. 3d 597, 604 (¶ 27) (Miss. 2012) (citing *Kirkwood v. State*, 52 So. 3d 1184, 1187 (¶ 12) (Miss. 2011)). Here, the State proved the requisite elements of the crime of burglary of a dwelling as defined in Mississippi Code Section 97-17-23 (Rev. 2014). The State also proved that Alston is a habitual offender under Section 99-19-81.

¶13. After reviewing the record and transcript, we find no reversible error and no viable issues to be argued on appeal. As such, we affirm Alston’s conviction and sentence.

¶14. **AFFIRMED.**

**RANDOLPH, C.J., KITCHENS AND KING, P.JJ., MAXWELL, BEAM,
CHAMBERLIN, ISHEE AND GRIFFIS, JJ., CONCUR.**