

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2005-KA-00390-COA

DEMETRIUS MCCLAIN

APPELLANT

v.

STATE OF MISSISSIPPI

APPELLEE

DATE OF JUDGMENT:	1/20/2005
TRIAL JUDGE:	HON. MARGARET CAREY-MCCRAY
COURT FROM WHICH APPEALED:	LEFLORE COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	W. S. STUCKEY
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: SCOTT STUART
DISTRICT ATTORNEY:	JOYCE IVY CHILES
NATURE OF THE CASE:	CRIMINAL - FELONY
TRIAL COURT DISPOSITION:	CONVICTED OF BURGLARY OF A BUSINESS AND SENTENCED TO SEVEN YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS WITH THREE AND A HALF YEARS TO SERVE AND THREE AND A HALF YEARS OF POST- RELEASE SUPERVISION TO RUN CONCURRENTLY TO THE SENTENCE APPELLANT IS NOW SERVING AND PAY \$400 RESTITUTION
DISPOSITION:	AFFIRMED - 04/25/2006
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

BEFORE LEE, P.J., GRIFFIS AND ROBERTS, JJ.

LEE, P.J., FOR THE COURT:

FACTS AND PROCEDURAL HISTORY

¶1. Quanterri Thomas was working the night shift on June 7, 2004, at Gas and Go in Greenwood. Demetrius McClain arrived at the store in a red Chevy Cavalier, entered the gas station and spoke

with Thomas but left the premises. McClain returned on foot a short time later, and Thomas and McClain had a short conversation before McClain left again. After McClain left, two individuals appeared on the security television monitor entering and exiting the supply room in which the car wash supplies were stored. Thomas called the police.

¶2. Officer Melvin Cook of the Greenwood Police Department responded to Thomas's call, and as he approached the Gas and Go he saw Russell Thornton standing at the storage room door, while McClain entered and exited the storage space. Officer Cook also observed a red car parked by the storage room. The two men attempted to leave in the red car which McClain was driving. Officer Cook apprehended the men and searched the vehicle, finding a crowbar, a white sock containing coins, a leaf blower and two cases of Armor All. At trial, Money Pillai, who owns Gas and Go, identified the items as his.

¶3. McClain was convicted by a jury in Leflore County of burglary of a business and sentenced to serve seven years in the custody of the Mississippi Department of Corrections with three and one-half years suspended, followed by three and one-half years of post-release supervision to run concurrently to the sentence McClain was serving in an unrelated matter.

¶4. It is from this conviction that McClain appeals. Finding no error, we affirm.

DISCUSSION

¶5. McClain's attorney, W.S. Stuckey, Jr., filed a brief with this Court which stated as follows:

1. It is the opinion of counsel for the Appellant that there are no arguable issues supporting Appellant's appeal, and that he has reached this conclusion after scouring the record thoroughly, specifically examining:

- (a) the reason for the arrest and the circumstances surrounding the arrest;
- (b) any possible violations of Appellant's right to counsel;
- (c) the entire trial transcript;
- (d) all rulings of the trail [sic] court;

- (e) possible prosecutorial misconduct;
- (f) all jury instructions;
- (g) all exhibits, whether admitted into evidence or not; and
- (h) possible misapplication of the law in sentencing.

2. Counsel for Appellant shall forward a copy of this Brief to Appellant that counsel could find no arguable issues in the record, but that he has the right to file a pro se supplemental brief, if he desires.

3. Counsel for Appellant requests this Court allow 30 days additional time for Appellant to file said supplemental brief.

¶6. These declarations were filed in conformity with *Lindsey v. State*, No. 2003-KA-00331-SCT, (Miss. Mar. 17, 2005). Under *Lindsey*, should McClain file a brief raising “any arguable issue” or if this Court should discover “any arguable issue” on our review of the record, if circumstances warrant, this Court must require counsel for the appellant to file supplemental briefing “regardless of the probability of the defendant’s success on appeal.” *Id.* at 5 (¶18).

¶7. To date nothing has been received by this Court from McClain. Additionally, the State agrees with Stuckey’s assertion that there are no arguable issues supporting an appeal.

¶8. This Court has reviewed the record, the clerk’s papers and the exhibits and has found no arguable issues on the merits of this case. As we find no issue warranting reversal, we affirm. *See Eaton v. State*, 913 So. 2d 413, 416 (¶6) (Miss. Ct. App. 2005)

¶9. THE JUDGMENT OF THE CIRCUIT COURT OF LEFLORE COUNTY OF CONVICTION OF BURGLARY OF A BUSINESS AND SENTENCE OF SEVEN YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS, WITH THREE AND ONE-HALF YEARS TO SERVE AND THREE AND ONE-HALF YEARS OF POST-RELEASE SUPERVISION, TO RUN CONCURRENTLY TO THE SENTENCE THE APPELLANT IS NOW SERVING AND PAY RESTITUTION OF \$400, IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO LEFLORE COUNTY.

KING, C.J., MYERS, P.J., SOUTHWICK, IRVING, CHANDLER, GRIFFIS, BARNES, ISHEE AND ROBERTS, JJ., CONCUR.