

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2005-KA-01474-COA

DEXTER “D.L.” SMITH

APPELLANT

v.

STATE OF MISSISSIPPI

APPELLEE

DATE OF JUDGMENT:	6/30/2005
TRIAL JUDGE:	HON. JANNIE M. LEWIS
COURT FROM WHICH APPEALED:	HUMPHREYS COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT	W.S. STUCKEY, JR.
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: DEIRDRE MCCRORY
DISTRICT ATTORNEY:	JAMES H. POWELL, III
NATURE OF THE CASE:	CRIMINAL - FELONY
TRIAL COURT DISPOSITION:	COUNT I - CONVICTION OF AGGRAVATED ASSAULT AND SENTENCE OF TWENTY YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS, WITH THE LAST FIVE YEARS ON POST-RELEASE SUPERVISION. COUNT II- CONVICTION OF FELON IN POSSESSION OF A FIREARM AND SENTENCE OF THREE YEARS IN THE MISSISSIPPI DEPARTMENT OF CORRECTIONS, WITH BOTH SENTENCES RUNNING CONSECUTIVELY.
DISPOSITION:	AFFIRMED: 1/23/2007
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

BEFORE KING, C.J., IRVING AND GRIFFIS, JJ.

KING, C.J., FOR THE COURT:

FACTS

¶1. On August 15, 2004, patrons of the 49 Club in Humphreys County were shooting dice on a pool table when Dexter “D.L.” Smith set two dinner plates on the table. Christopher Lowe, who

was running the dice game, asked Smith to remove the plates from the table. Smith and Lowe exchanged unkind words, and Lowe punched Smith in the mouth. Smith then fired three shots, one of which hit Lowe in the shoulder. Smith left the scene and went to Deana Blakely's house. Smith told Blakely that a man had punched him in the mouth, so Smith shot him. Smith hid the gun behind a pillow in Blakely's bedroom. Officers tracked Smith to Blakely's house where they retrieved the gun and found Smith hiding in a refrigerator.

¶2. Four eyewitnesses, including Lowe, testified at trial. Blakely also testified about Smith's confession to her. Smith testified that he did not have a weapon on the night in question, but stated that he heard someone else fire a shot during the fight. A Humphreys County Circuit Court jury found Smith guilty of aggravated assault and being a felon in possession of a firearm.

ANALYSIS

¶3. In accordance with *Lindsey v. State*, 939 So. 2d 743 (Miss. 2005), Smith's attorney, W.S. Stuckey, Jr., filed an appellate brief in which he states the following:

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 with advice 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 the Appellant to file said supplemental brief, should he so desire.

Lindsay provides that once such declarations have been filed with this Court,

Should the defendant then raise any arguable issue or should the appellate court discover any arguable issue in its review of the record, the court must, if circumstances warrant, require appellate counsel to submit supplemental briefing on the issue, regardless of the probability of the defendant's success on appeal.

Lindsey at (¶18).

¶4. Smith has not filed a supplemental brief with this Court. Additionally, after a thorough review of the record, this Court finds no arguable issue on which to base an appeal. Accordingly, we affirm the trial court's judgment.

¶5. THE JUDGMENT OF THE HUMPHREYS COUNTY CIRCUIT COURT OF CONVICTION OF COUNT I AGGRAVATED ASSAULT AND SENTENCE OF TWENTY YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS WITH THE LAST FIVE YEARS TO BE SERVED ON POST-RELEASE SUPERVISION AND CONVICTION OF COUNT II BEING A FELON IN POSSESSION OF A FIREARM AND SENTENCE OF THREE YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO APPELLANT.

LEE AND MYERS, P.JJ., IRVING, CHANDLER, GRIFFIS, BARNES, ISHEE, AND ROBERTS, JJ., CONCUR. CARLTON, J., NOT PARTICIPATING.