

IN THE COURT OF APPEALS 06/04/96

OF THE

STATE OF MISSISSIPPI

NO. 94-KA-00721 COA

DERRICK WILSON A/K/A "GRASSHOPPER"

APPELLANT

v.

STATE OF MISSISSIPPI

APPELLEE

PER CURIAM AFFIRMANCE MEMORANDUM OPINION

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. KEITH STARRETT

COURT FROM WHICH APPEALED: COPIAH COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

M. A. BASS

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL

BY: DIERDRE MCCRORY

DISTRICT ATTORNEY: J. DANIEL SMITH, ASST. D. A.

NATURE OF THE CASE: SHOOTING INTO AN OCCUPIED DWELLING HOUSE

TRIAL COURT DISPOSITION: FOUND GUILTY AND SENTENCED TO TEN YEARS IN

THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS WITH THE LAST YEAR SUSPENDED AND A FIVE YEAR PROBATIONARY PERIOD TO FOLLOW

BEFORE FRAISER, C.J., COLEMAN, AND KING, JJ.

PER CURIAM:

Derrick Wilson was convicted in the Copeiah County Circuit Court of shooting into a dwelling house in violation of section 97-37-29 of the Mississippi Code of 1972. He was sentenced to ten years in the custody of the Mississippi Department of Corrections with the last year suspended and a five-year probationary period to follow.

On appeal, Wilson asserts that the trial court erred in not granting his request for a mistrial. Wilson contends that his conviction should be reversed and remanded for a new trial based on the prosecutor's improper insertion into his closing argument facts which were not contained in the record but essential to Wilson's conviction. Because Wilson failed to include the transcript of the closing argument containing the alleged error, we are barred from considering his claim. "[I]t is an appellant's duty to justify his arguments of error with a proper record, which does not include mere assertions in his brief, or the trial court will be considered correct." *American Fire Protection v. Lewis*, 653 So. 2d 1387, 1390 (Miss. 1995); see also *Dillon v. State*, 641 So. 2d 1223, 1225 (Miss. 1995). Without a record of the remarks of the prosecutor, Wilson's arguments amount to mere assertions, and we are compelled to affirm the judgment of the Copeiah County Circuit Court.

THE JUDGMENT OF THE COPIAH COUNTY CIRCUIT COURT OF CONVICTION OF SHOOTING INTO A DWELLING HOUSE AND SENTENCE OF TEN YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS WITH THE LAST YEAR SUSPENDED AND A FIVE YEAR PROBATIONARY PERIOD TO FOLLOW IS AFFIRMED. COSTS ARE TAXED TO COPIAH COUNTY.

FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, DIAZ, KING, McMILLIN, PAYNE, AND SOUTHWICK, JJ., CONCUR.