

**IN THE SUPREME COURT OF MISSISSIPPI**

**NO. 2018-KA-00837-SCT**

***ANTWUNE WASHINGTON***

**v.**

***STATE OF MISSISSIPPI***

DATE OF JUDGMENT: 06/01/2018  
TRIAL JUDGE: HON. DAL WILLIAMSON  
TRIAL COURT ATTORNEYS: JOHN ANTHONY PIAZZA  
DENNIS LEE BISNETTE  
COURT FROM WHICH APPEALED: CIRCUIT COURT OF THE SECOND  
JUDICIAL DISTRICT OF JONES COUNTY  
ATTORNEYS FOR APPELLANT: OFFICE OF STATE PUBLIC DEFENDER  
BY: GEORGE T. HOLMES  
PHILLIP W. BROADHEAD  
ANTWUNE WASHINGTON (PRO SE)  
ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL  
BY: BARBARA BYRD  
DISTRICT ATTORNEY: ANTHONY J. BUCKLEY  
NATURE OF THE CASE: CRIMINAL - FELONY  
DISPOSITION: AFFIRMED - 12/05/2019  
MOTION FOR REHEARING FILED:  
MANDATE ISSUED:

**BEFORE KITCHENS, P.J., BEAM AND ISHEE, JJ.**

**KITCHENS, PRESIDING JUSTICE, FOR THE COURT:**

¶1. Antwune Washington was indicted in the Circuit Court of the Second Judicial District of Jones County on counts of aggravated assault and possession of a firearm by a felon. The jury acquitted Washington of aggravated assault, but found him guilty of felony possession of a firearm. Washington appealed. His appellate counsel filed a brief in accordance with

*Lindsey v. State*, 939 So. 2d 743 (Miss. 2005), certifying to this Court that, after examining the record, no arguable issues exist.

¶2. Washington, *pro se*, argues that the indictment was insufficient and that his conviction and sentence for felon in possession of a firearm must be vacated. He complains that his indictment was defective because it did not include the specific statutory subsection of the offense and thereby failed to charge an essential element of the crime.

¶3. This Court finds no arguable issues on appeal. Accordingly, we affirm Washington's conviction.

#### **FACTS AND PROCEDURAL HISTORY**

¶4. On October 1, 2016, Laurel Police Officer Kim Stewart responded to a shooting at Shadowood Apartments in Laurel, Mississippi. Officer Stewart testified that he saw a "black male laying in [a] breezeway suffering from [a] gunshot wound to the neck." The man was identified as Eric Drummond. Officer Stewart called emergency medical responders to assist Drummond.

¶5. Officer Stewart testified that he began to collect evidence from the apartment complex "start[ing] from [a] sidewalk up to the grassy area to the patio of the residence." His investigation detected "[o]ne shell casing [on] [a] sidewalk, one . . . in the grass, and another one also in the grassy area." Officer Stewart also stated that he "observed [that] the patio frame like a fence on the patio . . . had bullet holes in it." After "backtracking" through this evidence, "[Stewart] observed blood from the inside of the door of the patio leading around . . . to the breezeway" to the location where Eric Drummond was lying.

¶6. Officer Stewart also said that he obtained a revolver-type handgun from inside the residence. He observed that the weapon could hold eight rounds, that this revolver contained eight rounds, and that none of the cartridges had been fired. Even though this weapon was not shown to have had any relevance to the offense charged, the revolver and its ammunition—without objection—were entered into evidence at trial.

¶7. Officer Stewart testified that he did not find another firearm at Shadowood Apartments. He identified the shell casings that he collected as “small caliber shell casing[s] belonging to a .22 handgun.”<sup>1</sup> At trial, Officer Stewart described the locations where he had found the spent shell casings and those items also were entered into evidence.

¶8. Officer Stewart stated that he did not see a possible assailant at the scene; however Antwune Washington “turned himself in [to law enforcement officers] days later.” Washington signed a waiver of rights form and agreed to an interview with Officer Stewart. In the interview, Washington said that he had shot Drummond in self-defense during an altercation on October 1, 2016, at Shadowood Apartments. Washington also identified a location where he claimed to have put the handgun he had wielded during the shooting; but, according to Officer Stewart, after “[going] to Shadowood and look[ing] [at] the place . . . . [he] and other officers [were] unable to locate the gun.”

¶9. On June 16, 2017, a Jones County, Mississippi, grand jury indicted Washington for possession of a firearm by a felon under Mississippi Code Section 97-37-5. The indictment, in pertinent part, stated that Washington did

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<sup>1</sup>The officer was not asked, and he did not explain, how he could tell that the shells were not fired in a .22 rifle.

willfully, unlawfully, feloniously and knowingly possess and/or carry, in whole or in part, a firearm, a .22 caliber handgun, after having been previously convicted and sentenced of the felony crime of Possession of Cocaine . . . in Cause No. 2008-257-KR2 in the Second Judicial Circuit Court of Jones County, Mississippi . . . and has received no pardon or relief therefrom.

¶10. Washington’s trial began May 29, 2018. All witnesses at trial provided slightly differing recollections of the event, but no witness contradicted, and all corroborated, Washington’s acknowledgment that he had shot Eric Drummond with a firearm at Shadowood Apartments during an altercation on October 1, 2016. Washington’s videotaped interview was entered into evidence at trial. Washington did not testify. The parties stipulated to Washington’s prior conviction on the felony charge of possession of cocaine.

¶11. On May 30, 2018, the jury acquitted Washington of Count I of the indictment, aggravated assault, but found him guilty of Count II, possession of a firearm by a felon, for which the trial court sentenced him to ten years in prison. Miss. Code Ann. § 97-37-5 (Rev. 2014).

¶12. On June 8, 2018, Washington filed a notice of appeal. On April 12, 2019, Washington’s appellant counsel filed a brief “pursuant to *Lindsey v. State*, 939 So. 2d 743 (Miss. 2005) . . . finding no arguable issues in the record,” and notified Washington of his right to file *pro se* supplemental briefing. On May 14, 2019, Washington filed supplemental briefing “to secure full review of [his] claims.” Washington’s *pro se* arguments stem principally from the alleged insufficiency of his indictment for both offenses, even the one for which he had been acquitted, and he requests that his conviction and sentence for felon in possession be vacated.

## STANDARD OF REVIEW

¶13. “[O]ur review of the legal sufficiency of an indictment is an issue of law, and therefore is reviewed de novo.” *Berry v. State*, 996 So. 2d 782, 785 (¶ 8) (Miss. 2008) (internal quotation marks omitted) (quoting *Quang Thanh Tran v. State*, 962 So. 2d 1237, 1240 (¶ 12) (Miss. 2007)).

## DISCUSSION

¶14. When an indigent defendant’s appellate counsel files a brief representing that the client’s case presents no arguable issues for appeal, this Court applies the procedures outlined in *Lindsey*. *Lindsey*, 939 So. 2d at 748. Counsel must file a brief in compliance with the Mississippi Rules of Appellate Procedure. *Id.* In the brief,

counsel must certify that there are no arguable issues supporting the client’s appeal, and he or she has reached this conclusion after scouring the record thoroughly, specifically examining: (a) the reason for the arrest and the circumstances surrounding arrest; (b) any possible violations of the client’s right to counsel; (c) the entire trial transcript; (d) all rulings of the trial 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.

*Id.* “Counsel must send a copy of the brief to the defendant, inform the defendant that counsel could find no arguable issues in the record, and advise the client that he or she has the right to file a *pro se* brief.” *Neely v. State*, 264 So. 3d 755, 758 (Miss. 2019) (citing *Lindsey*, 939 So. 2d at 748). If the *pro se* brief raises an arguable issue or if this Court identifies an arguable issue from its review of the record, then the Court must, if warranted by the circumstances, require counsel to brief the issue. *Lindsey*, 939 So. 2d at 748-49.

¶15. In his *pro se* supplemental brief, Washington argues that his indictment was “fatally defective” and that he “was not sufficiently notified via the [indictment] of the charge he was facing.” Washington contends that “his indictment . . . is fatally defective for its failure to charge a crime, more specifically, for it[s] failure to charge an essential element [or] the omission of the specific statutory subsection . . . .” Washington also alleges that, because of the indictment, the trial court lacked subject matter jurisdiction over the case, he was illegally sentenced, and he received ineffective assistance of counsel.

¶16. This Court finds that Washington’s *pro se* brief presents no arguable issues. We have not found an arguable issue in our review of the record. Therefore, we find that no supplemental briefing is required. Washington’s claim of insufficiency for Count II, possession of a firearm by a felon, presents no arguable issue. Washington provides no authority or argument that omission of a statutory citation deprived him of reasonable notice or that the indictment otherwise failed to list the essential elements of the offense. Accordingly, the issue is considered waived. *See, e.g., Randolph v. State*, 852 So. 2d 547, 558 (¶ 30) (Miss. 2002) (“Therefore, this Court finds that because there is no meaningful argument on this issue for appellate review, the issue is considered waived.”). Moreover, while somewhat awkwardly drafted, we find that the charging language includes all the essential elements of the crime of felon in possession of a firearm. *See* Miss. Code. Ann. § 97-37-5(1) (Rev. 2014). Moreover, because Washington’s indictment was sufficient, his other assignments of error fail.

## CONCLUSION

¶17. Washington has presented no arguable issues for appeal and this Court has found none after careful review of the record. Accordingly, we affirm the judgment of the Circuit Court of the Second Judicial District of Jones County.

¶18. **AFFIRMED.**

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